

AGREEMENT OF LEASE

between

BATTERY PARK CITY AUTHORITY,

Landlord

and

A LIVING MEMORIAL TO THE HOLOCAUST:

MUSEUM OF JEWISH HERITAGE

Tenant

PREMISES

PORTION OF SITE 14 (SITE 14-A)

Battery Park City

New York, New York

Dated as of August __, 1994

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AGREEMENT OF LEASE (this "Lease") made as of August 16, 1994, between BATTERY PARK CITY AUTHORITY ("Landlord"), a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, New York 10281, and A LIVING MEMORIAL TO THE HOLOCAUST: MUSEUM OF JEWISH HERITAGE ("Tenant"), a New York education corporation having an office at 342 Madison Avenue, New York, New York.

WITNESSETH:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the terms, covenants and conditions hereinafter set forth.

ARTICLE 1

DEFINITIONS

The terms defined in this Article 1 shall, for all purposes of this Lease, have the following meanings.

"Accounting Principles" shall have the meaning provided in Section 3.1(b) hereof.

"AC Budget" shall have the meaning provided in Section 12.1(a).

"Added Interim Landlord Deposit" shall have the meaning provided in Section 12.1(a).

"Added Interim Tenant Deposit" shall have the meaning provided in Section 12.1(a).

"Allowable Costs" shall mean: (i) all "hard costs" (as that phrase is customarily defined in the construction industry) payable by Tenant for the construction of the Building, including any Capital Improvement, including, without limitation, all costs and expenses of improvements and materials incorporated into the Building, including any Capital Improvement; (ii) Design Fees, hereinafter defined, but in no event in excess of the Design Payment Maximum, hereinafter defined; (iii) costs of permits for construction of the Building and insurance and testing during construction of the Building; (iv) costs for usual museum fit-up for the Building such as special lighting, other built-in fixtures, display cases, other built-in furnishings, exhibit fabrication, alarm systems, temperature and humidity controls, and other built-in equipment; (v) an allowance approved in

writing by Landlord for furniture to be purchased by Tenant for the Building; and (vi) an amount not to exceed two hundred thousand dollars (\$200,000), plus an amount equal to the tax payable by Tenant to the State of New York attributable to the execution, delivery or recording of this Lease, both amounts to be provided solely from funds of Tenant and the Commission other than funds received from Landlord, for payment of costs of staff of Tenant engaged to supervise construction of the Building and for payment of such tax to the State of New York. Allowable Costs shall not include Excluded Costs, hereinafter defined.

"Approved Contracts" shall mean contracts entered into by Tenant in connection with the construction of the Building, including any Capital Improvement, and submitted to and approved by Landlord, under which amounts payable by Tenant include Allowable Costs.

"Approved Remedies" shall have the meaning provided in Section 29.4(a).

"Architect" shall mean Kevin Roche John Dinkeloo and Associates, or any other architect chosen by Tenant and approved by Landlord at least sixty (60) days prior to Tenant's submission to Landlord of Schematics (as hereinafter defined), which approval shall not be unreasonably withheld.

"Attendance Plan" shall mean the plan of marketing activity filed by Tenant with Landlord pursuant to Section 41.1(b) which shall include all advertising, promotional and other actions that Tenant proposes to take to increase attendance by the general

public at the Building and to increase Gross Entry or Exit Receipts.

"Balance of Site 14" shall have the meaning provided in Section 13.1.

"Base Rent" shall have the meaning provided in Section 3.1(b).

"Below Grade Work" shall have the meaning provided in Section 14.1(aa).

"Building" shall mean the buildings, Equipment (hereinafter defined), Capital Improvements (hereinafter defined), footing and foundations, and any other improvements and appurtenances of every kind and description hereafter erected, constructed, or placed upon the Land (hereinafter defined), and any and all alterations and replacements thereof, additions thereto and substitutions thereof.

"Business Days" shall mean any day which is not a Saturday, Sunday or a day observed as a holiday by either the State of New York or the federal government and the following Jewish holidays: Rosh Hashanah (both days), Yom Kippur, Succoth (first two (2) days), Shmini Atzereth, Simchas Torah, Passover (first two (2) days and last two (2) days) and Shavuoth (both days).

"Capital Improvement" shall have the meaning provided in Section 16.1.

"Certificate of Incorporation" shall mean the Provisional Charter of New York City Holocaust Memorial Museum (now known as The Museum of Jewish Heritage) granted on April 27, 1984 by the

Board of Regents of The University of the State of New York, as provided by Amendment to Charter granted May 23, 1986 as further amended by Amendment to Charter granted April 22, 1988.

"Certificate of Occupancy" shall mean a certificate of occupancy issued by the Department of Buildings of New York City or other similar certificate issued by a department or agency of New York City.

"Certified Public Accountant" or "C.P.A." shall have the meaning provided in Section 3.1(b).

"Civic Facilities" shall have the meaning provided in Section 29.1(a).

"Civic Facilities Budget" shall have the meaning provided in Section 29.5(b).

"Civic Facilities Payment" shall have the meaning provided in Section 29.5(a).

"Commencement Date" shall mean the date of this Lease.

"Commencement of Construction" shall mean the date upon which any on-site work (such as excavation or pile driving) for construction of the Building shall commence. Test borings, test pilings, surveys and similar pre-construction activities shall not constitute Commencement of Construction.

"Commission" shall mean the New York City Holocaust Memorial Commission, Inc.

"Completion of the Building" shall mean the later to occur of (i) the issuance of a permanent Certificate or Certificates of Occupancy for the Building, not including any Capital

Improvement, (ii) the date on which the Building, not including any Capital Improvement, is completed, or (iii) the date on which the Equipment, furnishings and exhibits reasonably necessary for the operation of the Building for Museum Uses are installed and ready to operate.

"Construction Agreements" shall mean agreements for construction of the Building, including any Restoration (hereinafter defined), Capital Improvement, rehabilitation, alteration, repair or demolition performed pursuant to this Lease.

"Construction Commencement Date" shall mean May 1, 1995.

"Construction Documents" shall have the meaning provided in Section 14.2(d).

"Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York, New York - Northeastern N.J. Area, All Items (1982-1984 = 100), or any successor or substitute index thereto, appropriately adjusted; provided that if there shall be no successor index and the parties shall fail to agree upon a substitute index within thirty (30) days, or if the parties shall fail to agree upon the appropriate adjustment of such successor or substitute index within thirty (30) days, a substitute index or the appropriate adjustment of such successor or substitute index, as the case may be, shall be determined by arbitration pursuant to Article 39.

"Default" shall mean any condition or event which constitutes or, after notice or lapse of time, or both, would constitute an Event of Default (hereinafter defined).

"Deferred Tenant Deposit" shall have the meaning provided in Section 12.1(a).

"Depository" shall mean a savings bank, a savings and loan association or a commercial bank or trust company (whether acting individually or in a fiduciary capacity), designated by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, to serve as Depository pursuant to this Lease, provided all funds held by Depository pursuant to this Lease shall be held in New York City and provided further that each of the above entities, or any combination of such entities, shall qualify as a Depository under this Lease only if each such entity shall (a) be subject to the jurisdiction of the courts of the State of New York in any actions and (b) have individual or combined assets, as the case may be, of not less than three hundred million dollars (\$300,000,000). In the event Landlord shall have unreasonably failed to approve a Depository designated by Tenant or designate an alternate Depository within ten (10) days after request of Tenant, Tenant shall have the right to designate such Depository.

"Design Development Plans" shall have the meaning provided in Section 14.2(c).

"Design Fees" shall mean costs incurred by Tenant after the Commencement Date for the design of the Building in accordance

with this Lease, including such costs payable by Tenant for fees and charges of Tenant's architects, engineers and other design professionals for their services specifically for construction of the Building in accordance with this Lease, provided that Design Fees shall include costs described above in this definition and incurred by Tenant before the Commencement Date for work by the Architect or for work on exhibit design by Ivan Chermayeff, to the extent of the amount of such costs set forth in any certifications, substantially in the form of Exhibit A hereto, signed by Kevin Roche for the Architect or Ivan Chermayeff, as the case may be, and delivered to Landlord.

"Design Guidelines" shall mean (i) the Design Guidelines for Battery Place Residential Area, prepared by Cooper, Eckstut Associates, dated May, 1985, as amended February, 1989, and as the same may hereafter be amended, modified or supplemented; and (ii) the Block 14 Design Guidelines prepared by Robert A.M. Stern Architects, dated February 1993.

"Design Payment Maximum" shall be the product of fifteen percent (15%), or such higher percentage, if any, as Landlord may approve at Tenant's request, which approval shall not be withheld unreasonably, multiplied by the sum of the portions of the estimate of Allowable Costs referred to in Section 14.1(b)(v) and approved by Landlord, which portions equal the estimates for (i) costs described in clause (iv) of the definition of Allowable Costs; (ii) costs for furniture included in Allowable Costs under clause (v) of the definition thereof; and (iii) "hard costs" for

construction of the Building; provided that for purposes of the Design Payment Maximum, if any Design Fees are incurred by Tenant at a rate in excess of One Hundred Fifty Dollars (\$150) per hour, then to the extent of such excess, they shall be deemed to be in excess of the Design Payment Maximum without regard to any other Design Fees or other Allowable or Excluded Costs.

"Development Agreement" shall have the meaning provided in Section 13.1.

"Due Date" shall mean, with respect to an Imposition (hereinafter defined), the last date on which such Imposition can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the nonpayment thereof.

"Effective Date" shall have the meaning provided in Section 2.2.

"End Date" shall mean the earlier of (i) the fifteenth (15th) anniversary of the date of execution of this Lease, or (ii) the date the first Development Agreement with a Site 14 Developer has been entered into, or (iii) the termination of this Lease for any reason.

"Equipment" shall mean, subject to the next sentence, all fixtures incorporated in the Premises, including, without limitation (i) all machinery, dynamos, boilers, heating and lighting equipment, pumps, tanks, motors, air conditioning, compressors, pipes, conduits, fittings, ventilating and communications apparatus, elevators, escalators, incinerators, garbage compactors, antennas, computers, and sensors, (ii) all

installations covered by clauses (i) or (iv) of the definition of Allowable Costs, and (iii) laundry equipment and refrigerators, and other similar appliances; except to the extent any of the foregoing shall be owned by concessionaires or contractors engaged in maintaining the same. "Equipment" shall not include (aa) any of the foregoing having the attributes of trade fixtures and not covered by clause (i) of the definition of Allowable Costs, (bb) any exhibit fabrication referred to in clause (iv) of the definition of Allowable Costs or (cc) any fixture or utilities owned by any utility company.

"ERS" shall have the meaning provided in Section 29.1(a).

"Esplanade" shall have the meaning provided in Section 29.1(a).

"Esplanade Budget" shall have the meaning provided in Section 29.5(b).

"Event of Default" shall have the meaning provided in Section 27.1.

"Excess Amount" shall have the meaning provided in Section 12.2(c).

"Excluded Costs" shall mean: (i) soft costs required for the opening of the Building to the public, such as costs of preparing for the opening and professional fees not included in the definition of Allowable Costs; (ii) costs of acquisition and preservation of exhibition items and materials, such as artifacts and historical material; (iii) costs for exhibitions other than exhibit fabrication; (iv) [intentionally omitted]; (v) admini-

strative and like costs of opening the Building to the public; (vi) costs of Building operation and maintenance before opening of the Building to the public; (vii) any Design Fees and any other costs within the definition of Allowable Costs but excluded from Allowable Costs due to the amounts thereof or any other reason including, without limitation, any Design Fees under Approved Contracts in excess of One Hundred Fifty Dollars (\$150) per hour, to the extent of such excess; and (viii) any costs incurred prior to the Commencement Date, except Design Fees to the extent of the amount thereof included in Allowable Costs in accordance with the definition of Design Fees.

"Expiration Date" shall have the meaning provided in Article 2.

"First Interim Landlord Deposit" shall have the meaning provided in Section 12.1(a).

"First Interim Tenant Deposit" shall have the meaning provided in Section 12.1(a).

"Floor Area" shall have the meaning provided in the Zoning Resolution of New York City.

"Governmental Authority (Authorities)" shall mean the United States of America, the State of New York, New York City or any other governmental or quasi-governmental agency or authority having jurisdiction over the Premises or any portion thereof, and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created.

"Gross Entry or Exit Receipts" shall have the meaning provided in Section 3.1(b).

"Impositions" shall have the meaning provided in Section 4.1.

"Improvement Approvals" shall have the meaning provided in Section 16.1(a).

"Initial Landlord Deposit" shall have the meaning provided in Section 12.1(a).

"Initial Tenant Deposit" shall have the meaning provided in Section 12.1(a).

"Indemnitees" shall have the meaning provided in Section 22.1.

"Initial Occupancy Date" shall have the meaning provided in Section 29.5(a).

"Interim Landlord Deposit" shall have the meaning provided in Section 12.1(a).

"Interim Tenant Deposit" shall have the meaning provided in Section 12.1(a).

"Involuntary Rate" shall mean four percent (4%) per annum plus the Prime Rate (hereinafter defined) but, in no event, in excess of the maximum permissible interest rate then in effect in the State of New York.

"Land" shall mean the northerly portion of the land which is shown hatched on Exhibit B hereto. If Tenant exercises its option as provided in Article 2 with respect to the Optioned Land (hereinafter defined), the Land shall automatically include the

Optioned Land as of the Effective Date. The Land shall be subject to the Light and Air Easement (hereinafter defined).

"Landlord", on the date as of which this Lease is made, shall mean Battery Park City Authority, but thereafter "Landlord" shall mean only the landlord at the time in question under this Lease.

"Landlord's Civic Facilities" shall have the meaning provided in Section 29.1(c).

"Landlord's Construction Obligations" shall have the meaning provided in Section 29.4(a).

"Landlord's Project Manager" shall have the meaning provided in Section 14.2(e).

"Lease" shall mean this Agreement of Lease and all amendments, modifications and supplements thereof.

"Lease Year" shall mean the twelve-month period beginning on the Commencement Date and each succeeding twelve-month period during the Term (hereinafter defined).

"Light and Air Easement" shall mean an easement for light and air running along the easterly boundary of the Land, extending thirty (30) feet west from said boundary, and benefiting the Balance of Site 14 for the purposes of (i) permitting lawful installation of windows in any improvements to be constructed on the Balance of Site 14 and (ii) maximizing the value of any such improvements, such easement to start at ^{sixty (60)} ~~forty-seven~~ ~~and one-half (47½)~~ feet above grade level with respect to the Optioned Land and to start at eighty-five (85) feet above grade.

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level with respect to the northerly portion of the Land shown hatched on Exhibit B hereto.

"Maintenance Obligations" shall have the meaning provided in Section 29.3.

"Master Development Plan" shall mean the 1979 Master Plan for Battery Park City Authority, prepared by Alexander Cooper Associates, dated October, 1979, as amended by the Second Amendment to Restated Amended Lease dated June 15, 1983 and recorded on June 20, 1983 in the Office of the City Register, New York County in Reel 696 at Page 432, as the same may be hereafter amended, modified or supplemented.

"Master Landlord", on the date as of which this Lease is made, shall mean Battery Park City Authority, but thereafter, "Master Landlord" shall mean only the lessor at the time in question under the Master Lease (hereinafter defined).

"Master Lease" shall mean the Restated Amended Agreement of Lease, made as of June 10, 1980, between BPC Development Corporation, as landlord, and Battery Park City Authority, as tenant, a Memorandum of which was recorded on June 11, 1980 in the Office of the City Register, New York County in Reel 527 at page 163, as amended by First Amendment to Restated Amended Lease dated as of June 15, 1983 and recorded on June 20, 1983 in said Register's Office in Reel 696 at page 424, Second Amendment to Restated Amended Lease dated June 15, 1983 and recorded on June 20, 1983 in said Register's Office in Reel 696 at page 432, Third Amendment to Restated Amended Lease dated as of August 15, 1986

and recorded on October 22, 1986 in said Register's Office in Reel 1133 at page 569, and Fourth Amendment to Restated Amended Lease dated as of May 25, 1990 and recorded May 30, 1990 in said Register's Office in Reel 1691 at page 0301, as the same may be hereafter amended, modified or supplemented.

"Maximum Construction Payment" shall have the meaning provided in Section 12.1(b).

"Museum Uses" shall mean the use, occupancy and operation of the Premises, including, without limitation, the Building, solely for those purposes specified in Tenant's Certificate of Incorporation as in effect on the date of this Lease (which purposes shall in all respects be consistent with the use of the Premises as a museum and memorial devoted to the Holocaust and open to the general public), and for no other use or purpose; provided, however, such use, occupancy and operation shall be in accordance with the Certificate(s) of Occupancy for the Premises, the Master Development Plan and the Design Guidelines.

"New York City" shall mean The City of New York, a municipal corporation of the State of New York.

"Operating Costs" shall have the meaning provided in Section 29.5(a).

"Option" shall have the meaning provided in Section 2.2.

"Optioned Land" shall mean the southerly portion of the land not shown hatched on Exhibit B hereto.

"Parks-Esplanade Budget" shall have the meaning provided in Section 29.5(a).

"Payment Period" shall have the meaning provided in Section 29.5(b).

"Payment in Lieu of Sales Taxes" and "PILOST" shall have the meaning provided in Section 5.3.

"Payment in Lieu of Taxes" and "PILOT" shall have the meaning provided in Section 5.1.

"Person" shall mean an individual, corporation, partnership, joint venture, estate, trust, unincorporated association, any Federal, State, County or municipal government or any bureau, department or agency thereof.

"Phase III" shall mean the Battery Place Residential Area of the Project Area (hereinafter defined), as delineated in the Design Guidelines.

"Premises" shall mean the Land and the Building.

"Pre-Schematics" shall have the meaning provided in Section 14.2(a).

"Prime Rate" shall mean the rate announced from time to time by Citibank, N.A., or its successors, at its principal office as its "base rate". Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a three hundred sixty (360)-day year with twelve (12) months of thirty (30) days each.

"Project Area" shall mean the premises demised pursuant to the Master Lease.

"Public Areas" shall have the meaning provided in Section 14.2(k).

"Quarterly Period" shall have the meaning provided in Section 3.1(a).

"Rent Insurance" shall have the meaning provided in Section 8.1(a)(iv).

"Rental" shall have the meaning provided in Section 3.3.

"Rental Determination Statement" shall have the meaning provided in Section 3.1(e).

"Requirements" shall have the meaning provided in Section 17.1.

"Residential Lease" shall mean that certain Agreement of Lease dated September 4, 1986 by and between Landlord, as landlord, and the Commission, as tenant, which has been terminated by that certain surrender and termination agreement dated the Commencement Date.

"Restoration" shall have the meaning provided in Section 9.1.

"Restoration Funds" shall have the meaning provided in Section 9.2(a).

"Restore" shall have the meaning provided in Section 9.1.

"Sales Tax Exemption" shall have the meaning provided in Section 5.3(c).

"Scheduled Completion Date" shall have the meaning provided in Section 14.4.

"Schematics" shall have the meaning provided in Section 14.2(b).

"Self-Help" shall have the meaning provided in Section 29.4(b).

"Settlement Agreement" shall mean the Settlement Agreement, dated as of June 6, 1980, between New York City and the Urban Development Corporation, as supplemented by Letter, dated June 9, 1980, from Richard A. Kahan to Edward I. Koch, and amended by Amendment to Settlement Agreement dated as of August 15, 1986 between New York City and Landlord, as supplemented by an Agreement for Certain Payments, dated as of June 28, 1989, between New York City and Landlord, amended May 18, 1990, and as supplemented by an Agreement and Consent and a Memorandum of Understanding, both dated December 30, 1989, and as the same may be hereafter amended, modified or supplemented.

"Site 14" shall mean Site 14 in Battery Park City.

"Site 14 Appraiser" shall mean the real estate appraiser selected in the manner provided in Section 13.4.

"Site 14 Developer" shall have the meaning provided in Section 13.1.

"South Park" shall have the meaning provided in Section 29.1(a).

"South Park Budget" shall have the meaning provided in Section 29.5(b).

"Subleases" shall have the meaning provided in Section 11.4.

"Substantial Completion of the Building" or "Substantially Complete(d)" shall have the meanings provided in Section 14.4.

"Subtenants" shall have the meaning provided in Section 11.4.

"Tax Exemption" shall have the meaning provided in Section 5.1(b).

"Taxes" shall mean the real property taxes assessed and levied against the Premises or any part thereof pursuant to the provisions of Chapter 58 of the Charter of New York City and Chapter 17, Title B, of the Administrative Code of The City of New York, as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part, and real property taxes which would otherwise be payable if the Premises or any part thereof or the owner thereof were not exempt therefrom.

"Tenant" shall mean A Living Memorial to the Holocaust: Museum of Jewish Heritage, or any successor to its interest hereunder in accordance with the terms of this Lease.

"Tenant's Civic Facilities" shall have the meaning provided in Section 29.1(b).

"Term" shall mean the term of this Lease as set forth in Article 2 hereof.

"Title Matters" shall mean those matters affecting title to the Land set forth in Exhibit C hereto.

"Trust Account" shall have the meaning provided in Section 12.1(a).

"Trustee" shall mean Republic National Bank, New York head office, or any successor thereto designated by Landlord, to serve as trustee with respect to the Trust Account pursuant to this Lease.

"Unavoidable Delays" shall mean (i) with respect to Tenant or its obligations hereunder, delays incurred by Tenant due to any cause beyond Tenant's reasonable control (but not including Tenant's insolvency or financial condition), and (ii) with respect to Landlord or its obligations hereunder, delays incurred by Landlord due to any cause beyond Landlord's reasonable control (but not including Landlord's insolvency or financial condition); in each case provided such party shall have notified the other party not later than fourteen (14) days after such party knows or should have known of the occurrence of same and the effects of which a prudent Person in the position of the party asserting such delay could not have reasonably prevented.

ARTICLE 2

PREMISES, TERM OF LEASE AND OPTION

Section 2.1 Landlord does hereby demise and sublease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to the Title Matters and the Light and Air Easement.

TO HAVE AND TO HOLD unto Tenant, its successors and assigns, for a term of years (the "Term") commencing on the Commencement Date and expiring on the 17th day of June, 2069 or on such earlier date upon which this Lease may be terminated as hereinafter provided (the "Expiration Date").

Section 2.2 Landlord does hereby grant to Tenant an option (the "Option") to sublease the Optioned Land on the terms and conditions set forth in this Lease, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Optioned Land, subject to the Title Matters and the Light and Air Easement. The Option may be exercised by Tenant at any time during the Term by notice given to Landlord by Tenant, which notice shall (i) specify the date on which the Option is to become effective (the effective date specified in said notice is herein referred to as the "Effective Date") and (ii) be given by Tenant to Landlord not less than one (1) year prior to the Effective Date (the purpose of the one (1) year notice period being to allow Landlord

sufficient time to make adjustments with respect to the Optioned Land resulting from the discontinuation of Landlord's use thereof). As of the Effective Date, the Optioned Land shall be deemed to have been subleased to Tenant by Landlord upon and subject to all the terms, conditions, covenants and provisions of this Lease.

Section 2.3 Notwithstanding anything to the contrary contained in this Lease, in no event shall any structures or other improvement or improvements in excess of a height of eighty-five (85) feet above grade level exist at any time on the northerly portion of the Land shown hatched on Exhibit B or in excess of a height of ^{sixty (60)} ~~forty-seven and one-half (47 1/2)~~ feet above grade level exist at any time on the Optioned Land.

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ARTICLE 3

RENT

Section 3.1

(a) For the period beginning on the Commencement Date and continuing thereafter throughout the Term, Tenant shall pay to Landlord the Rental Obligation (as hereinafter defined), as provided herein. "Rental Obligation" for any Lease Year or portion thereof shall mean the amount, if any, by which the Base Rent exceeds the Civic Facilities Payment for such Lease Year or portion thereof. The Civic Facilities Payment shall be payable as provided in Article 29. The Rental Obligation for any three (3) month period of any Lease Year (a "Quarterly Period") shall be payable in arrears within forty-five (45) days after the end of such Quarterly Period.

(b) As used in this Lease, the following terms shall have the following meanings:

"Accounting Principles" shall mean, from time to time, the then current generally accepted accounting principles, consistently applied.

"Base Rent" shall mean for any particular time period an amount equal to ten percent (10%) of the Gross Entry or Exit Receipts during such time period, computed in accordance with Section 3.1(e).

"Certified Public Accountant" or "C.P.A." shall mean any independent certified public accountant of recognized

standing selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld.

"Gross Entry or Exit Receipts" shall mean, as determined in accordance with Accounting Principles, all amounts received by or on behalf of Tenant, in the form of cash or credit transactions, or otherwise, from fees charged, and/or donations collected, upon or for admission to, exit from or use of the Premises or any portion thereof, including, without limitation, any portions of the Premises used for a conference center, exhibition areas, special events or exhibits, lectures, classes, library facilities, archives, an auditorium or facilities for scholarly research. Gross Entry or Exit Receipts shall not include amounts received by Tenant as general or off-site donations or fees or dues paid to Tenant that constitute membership fees.

(c) Tenant shall, at all times during the Term, provide for a recommended donation to be collected at the public entrances to and exits from the Premises, and/or charge an admission, exit or use fee, for general admission to, exit from or use of the Premises. Unless an admission, exit or use fee shall be charged, Tenant shall at all times prominently display, at each of the public entrances to and exits from the Building, at least one container for the receipt of donations, identified as such, together with a reasonably visible sign notifying persons entering or exiting the Building of the amount of recommended

donation and the container designated for the receipt of donations or other contributions from the public with respect to general admission to, exit from or use of the Premises or any portion thereof.

(d) The fixing of Base Rent based on a percentage of Gross Entry or Exit Receipts shall not be deemed to constitute Landlord as a partner or an associate in business with, or responsible or liable in any way for the operations of, Tenant. Landlord and Tenant further agree that they are not partners or joint venturers.

(e) (i) For the purposes of calculating Base Rent for each Lease Year during the Term, Tenant shall deliver to Landlord as soon as practicable after the end of each Quarterly Period but in no event later than thirty (30) days thereafter, a statement (the "Rental Determination Statement") with respect to such Quarterly Period. Such Rental Determination Statement shall be prepared in accordance with Accounting Principles, at Tenant's sole cost and expense, and shall, in addition to setting forth the aggregate amount of Gross Entry or Exit Receipts for such Quarterly Period, provide a breakdown of Gross Entry or Exit Receipts based on the total number of individuals attending the Building on a daily and monthly basis. The Rental Determination Statement shall be certified in writing by the chief financial officer, or if none, the chief executive officer, of Tenant as being true, complete and correct. Within twenty (20) days after Landlord's request therefor, Tenant shall provide Landlord with such additional

information in Tenant's possession concerning any such Rental Determination Statement or certification as Landlord may reasonably require, including all information in Tenant's possession showing gross revenues of Tenant whether or not included in or excluded from Gross Entry or Exit Receipts.

(ii) Tenant shall also deliver to Landlord as soon as practicable after the end of each Lease Year but in no event later than one hundred twenty (120) days thereafter, a Rental Determination Statement with respect to such Lease Year certified as aforesaid by the chief financial officer, or if none, the chief executive officer, of Tenant and accompanied by a report and opinion of a Certified Public Accountant; stating that it has performed an examination in accordance with generally accepted auditing standards, and that such statement was prepared in accordance with Accounting Principles and this Lease. Within twenty (20) days after Landlord's request therefor, Tenant shall provide, or cause such Certified Public Accountant to provide, Landlord with such additional information concerning any such Rental Determination Statement, certification or report and opinion as Landlord may reasonably require.

Section 3.2 In connection with the payment by Tenant of the Rental Obligation, the following provisions shall apply:

(a) Tenant shall at all times keep and maintain at an office located in New York City books and records prepared on the basis required under Section 3.1(e), showing in reasonable detail the amount of Gross Exit or Entry Receipts. Unless consented to

in writing by Landlord, such books and records relating to any Quarterly Period and/or Lease Year shall not be destroyed or disposed of for a period of six (6) years after the end of such Quarterly Period and/or Lease Year, as the case may be. Landlord or its representatives shall have the right during regular business hours, after reasonable notice and except as otherwise provided under other provisions hereof, at Landlord's expense, to examine, audit and/or photocopy all such books and records, provided that no such audit shall be conducted more often than once in a period of twelve (12) months unless in the prior three (3) years, there has been an audit which disclosed an underpayment of Rental Obligations described in the last sentence of Section 3.2(b).

(b) If Landlord conducts an audit of Tenant's books and records and such audit discloses an underpayment of Rental Obligation, or if an examination of any Rental Determination Statement by a Certified Public Accountant discloses or confirms an underpayment of Rental Obligation, or if an arbitration pursuant to Article 39 results in a determination of an underpayment of Rental Obligation, Tenant shall pay to Landlord within ten (10) days after demand the amount of such deficiency, plus interest thereon at the Prime Rate from the date upon which such sum was due to the date of actual payment. In addition, if such deficiency shall be in excess of either ten thousand dollars (\$10,000) or ten percent (10%) of the amount previously paid by Tenant, interest shall be payable under the preceding sentence at

the Involuntary Rate rather than the Prime Rate and Tenant shall pay to Landlord within ten (10) days after demand all reasonable costs incurred by Landlord in connection with such audit or examination or arbitration.

(c) If at any time and for any reason there shall be a dispute as to the determination of Base Rent, such dispute shall be determined by arbitration pursuant to Article 39.

Section 3.3 All amounts required to be paid by Tenant pursuant to this Lease, including, without limitation, Rental Obligation, PILOT, PILOST, Impositions and Civic Facilities Payments (collectively, "Rental"), shall constitute rent under this Lease and shall be paid as provided herein. Rental shall be payable in currency which at the time of payment is legal tender for public and private debts in the United States of America, and shall be payable at the office of Landlord set forth above or at such other place as Landlord shall direct by notice to Tenant. Rental shall be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever except as specifically set forth in this Lease, so that this Lease shall yield, net, to Landlord Rental in each year during the Term and that Tenant shall pay all costs, expenses and charges of every kind and nature relating to the Premises (except Taxes, if any, and the cost of constructing and maintaining Landlord's Civic Facilities) which may arise or become due or payable during or after (but attributable to a period falling within) the Term. Except as otherwise expressly set forth in this Lease, Tenant's

covenant to pay Rental as specified herein shall be independent of all other covenants and agreements provided in this Lease.

ARTICLE 4
IMPOSITIONS

Section 4.1

(a) The term "Impositions" shall mean the following items imposed by any Governmental Authority (other than a Governmental Authority acting in its capacity as Landlord and not as a Governmental Authority): (i) personal property taxes, (ii) occupancy and rent taxes, (iii) water, water meter and sewer rents, rates and charges, (iv) excises, (v) levies, (vi) license and permit fees, (vii) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any, (viii) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto and (ix) any and all other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest or costs with respect thereto (1) which at any time during the Term are, or, if the Premises or any part thereof or the owner thereof were not exempt therefrom, would have been assessed, levied, confirmed, imposed upon or would have become due and payable out of or in respect of, or would have been charged with respect to, the Premises or the use and occupancy thereof by Tenant or this Lease or any other document to which Tenant is a party creating or transferring an interest or estate in the Premises or (2) which

at any time during the Term are or, if the Premises or any part thereof or the owner thereof were not exempt therefrom, would have been encumbrances or liens on (aa) the Premises, or (bb) the sidewalks or streets in front of or adjoining the Premises, or (cc) any vault (other than a vault in respect of which a utility company is obligated to pay any charge specified above or which is exempt from any such charge by reason of use thereof by any such utility company), passageway or space in, over or under such sidewalk or street, or (dd) any other appurtenances of the Premises, or (ee) any personal property (except personal property which is not owned by or leased to Tenant), Equipment or other facility used in the operation thereof, or (ff) the Rental (or any portion thereof) payable by Tenant hereunder. Notwithstanding the preceding sentence, the term "Impositions" shall not include either Taxes or any sales or compensating use tax to the extent that, with respect thereto, Tenant has paid or is required to pay hereunder to Landlord any PILOST.

(b) Tenant shall pay to the appropriate Government Authorities, not later than thirty (30) days prior to the Due Date, all Impositions, or installments thereof, required to be paid during the Term, provided that Tenant shall be entitled to all exemptions or abatements, if any, that would be available to Tenant under any law, rule, regulation or code which now or hereafter grants abatements of or exemption or other relief from Impositions. If, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall

accrue on the unpaid balance of such Imposition), Tenant, after notice to Landlord, may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, together with applicable interest, if any, provided that all such installment payments together with applicable interest, if any, relating to periods prior to the date definitely fixed in Article 2 hereof for the expiration of the Term shall be made prior to the Expiration Date.

Section 4.2 Tenant, from time to time upon request of Landlord, shall promptly furnish to Landlord official receipts of the appropriate imposing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment of any Impositions required to be paid by Tenant hereunder.

Section 4.3 If the Premises shall at any time become subject to Taxes, Landlord shall pay the Taxes on or before the due date thereof. In no event shall Tenant be obligated to pay Taxes. Landlord shall have the right to contest the imposition of Taxes, and pending such contest, if permitted by applicable law, Landlord shall not be required to pay the Taxes being so contested, unless failure to pay same shall result in the imminent loss or forfeiture of the Premises or the termination of Tenant's interest under this Lease or Tenant would by reason thereof be subject to any civil or criminal penalty or liability. If Landlord shall exercise its right to contest the imposition of Taxes, Landlord shall promptly notify Tenant of such contest, and, at Tenant's request, shall deliver to Tenant copies of all

applications, protest and other documents submitted by Landlord to any Governmental Authority. If Landlord shall have failed to pay the Taxes as required hereunder and shall not have timely commenced a proceeding to contest same, or shall have timely commenced a proceeding to contest the Taxes but failure to pay the Taxes during the pendency of such proceeding will result in the imminent loss or forfeiture of the Premises or the termination of Tenant's interest under this Lease or Tenant would by reason thereof be subject to any civil or criminal penalty or liability, then Tenant may pay such unpaid Taxes together with any interest or penalties thereon, and Tenant shall receive a credit therefor against amounts due to Landlord hereunder.

Section 4.4 Any Imposition relating to a period a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the date definitely fixed in Article 2 hereof for the expiration of the Term, whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or shall become payable, during the Term, shall be apportioned between Landlord and Tenant as of the Commencement Date or such date definitely fixed for the expiration of the Term, as the case may be, so that Tenant shall pay that portion of such Imposition which that part of fiscal period included in the period of time after the Commencement Date or before such date definitely fixed in Article 2 for the expiration of the Term bears to such fiscal period, and Landlord

shall pay the remainder thereof. Other than in respect of Impositions relating, in part, to a period of time before the Commencement Date, no such apportionment of Impositions shall be made if this Lease is terminated prior to the Expiration Date as the result of an Event of Default.

Section 4.5 Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 4.1 hereof, payment of such Imposition shall be postponed if, and only as long as:

(a) neither the Premises nor any part thereof, or interest therein or any income therefrom (except to the extent covered by security deposited in accordance with this Section 4.5) or any other assets of or funds appropriated to Landlord would, by reason of such postponement or deferment, be in imminent danger of being forfeited or lost or subject to any lien, encumbrance or charge, and neither Landlord nor Tenant would by reason thereof be subject to any civil or criminal liability; and

(b) Tenant shall have deposited with Depository, cash or other security reasonably satisfactory to Landlord in the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part thereof in such proceedings.

Upon the termination of such proceedings, it shall be the obligation of Tenant to pay the amount, if any, of such Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including attorney's fees and disbursements), interest, penalties or other liabilities in connection therewith, and upon such payment, or determination that no amount is due, Depository shall return, with interest, if any, any amount deposited with it as aforesaid, provided, however, that Depository at Tenant's request or upon Tenant's failure to do so in a timely manner, at Landlord's request, shall disburse said moneys on deposit with it directly to the Governmental Authority to whom such Imposition is payable and any remaining monies, with interest, if any, shall be returned promptly to Tenant. If, at any time during the continuance of such proceedings, Landlord shall, in its reasonable opinion, deem insufficient the amount deposited as aforesaid, Tenant, within fifteen (15) days after demand, shall make an additional deposit of such additional sums or other acceptable security as Landlord may request, and upon failure of Tenant to do so, the amount theretofore deposited may be applied at the request of Landlord to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including attorney's fees and disbursements) or other liability accruing in any such proceedings, and the balance, if any, with any interest earned

thereon, shall be returned to Tenant or the deficiency, if any, shall be paid by Tenant to Landlord within ten (10) days after demand.

Section 4.6 Tenant shall have the right to seek a reduction in the valuation of the Premises assessed for Taxes and to prosecute any action or proceeding in connection therewith, provided that no such action or proceeding shall postpone Tenant's obligation to pay any Imposition except in accordance with the provisions of Section 4.5.

Section 4.7 In connection with any proceeding referred to in Section 4.5 or 4.6, Landlord, upon request by Tenant and at no cost or expense to Landlord, shall reasonably cooperate with Tenant. However, Landlord shall not be required to join in any proceedings referred to in Section 4.5 or 4.6 hereof unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Landlord, in which event, Landlord shall join and cooperate in such proceedings or permit the same to be brought in its name but shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Landlord for any and all costs or expenses which Landlord may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements.

If the provisions of such law, rule or regulation at the time in effect shall require that such proceedings be brought by

or in the name of Master Landlord, Landlord shall use its best efforts to cause Master Landlord to join and cooperate in such proceedings or permit the same to be brought in the name of Master Landlord, provided Master Landlord shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Master Landlord for any and all costs and expenses which Master Landlord may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. In the event Tenant shall institute a proceeding referred to in Sections 4.5 or 4.6 hereof and no law, rule or regulation in effect at the time requires that such proceeding be brought by and/or in the name of Landlord, Landlord, nevertheless, shall, at Tenant's cost and subject to the reimbursement provisions hereinabove set forth, reasonably cooperate with Tenant in such proceeding.

Section 4.8 Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein.

ARTICLE 5
PILOT AND PILOST

Section 5.1

(a) Except as provided to the contrary in this Section 5.1, for each fiscal year of New York City ("Tax Year") or portion thereof within the Term, Tenant shall pay to Landlord, without notice or demand, an annual sum (each such sum being hereinafter referred to as a "Payment in Lieu of Taxes" or "PILOT") equal to Taxes during such Tax Year, for such Tax Year, payable in equal semi-annual installments in advance on the first (1st) day of each January and July. PILOT due for any period of less than six (6) months shall be appropriately apportioned. Tenant promptly shall apply to the appropriate authorities to obtain a separate tax lot designation for the Premises and Landlord shall cooperate with Tenant in connection therewith. The tax assessment for such tax lot shall be the basis for calculating the amount of PILOT. If Tenant shall not be able to obtain a separate tax lot designation, Landlord and Tenant shall cooperate to obtain an appropriate tax assessment apportionment and such apportionment shall be the basis for calculating the amount of PILOT.

(b) Tenant shall be entitled to the amount of exemptions or abatements, if any, that would be available to Tenant under any law, rule, regulation or code which now or hereafter grants abatements of or exemption or relief from Taxes to an owner of comparable real property in the Borough of Manhattan ("Tax Exemption"), provided that Tenant, if it were the fee owner of

the Premises, would comply with all requirements for such Tax Exemption. If at any time during the Term, Tenant shall fail to comply with any requirements for continuation of Tax Exemption, such Tax Exemption shall immediately end, and Tenant shall pay to Landlord the amount of PILOT as provided, in Section 5.1(a).

(c) On the basis of Tenant's representation and covenants and the other provisions in Sections 5.4 and 5.5, and based on laws, regulations and procedures in effect as of the date of execution of this Lease, Landlord recognizes and agrees that as of such date, Tenant qualifies for Tax Exemption and for Sales Tax Exemption and that as a result thereof, Tenant is not required to pay, as of such date, any amount for PILOT or PILOST, notwithstanding any other provision of this Article 5. The preceding sentence shall not apply, and Tenant's qualification for Tax Exemption and Sales Tax Exemption and Tenant's obligations to pay PILOT and PILOST shall be subject to and governed by all other provisions of this Article 5, if and for as long as any laws, regulations or procedures referred to in the preceding sentence do not apply, have been changed or otherwise are not in effect or if since the date of execution of this Lease, any change occurs in Tenant or in Tenant's purposes, activities or operations or in any other matter, which change results or could result in a change in Tenant's qualification for or entitlement to Tax Exemption or Sales Tax Exemption.

(d) If the first sentence of Section 5.1(c) does not apply, Tenant shall, in accordance with the provisions of this paragraph

(d), obtain proof reasonably acceptable to Landlord that Tenant would be entitled to Tax Exemption if it were the fee owner of the Premises.

(i) Tenant shall complete and file with the appropriate Governmental Authorities any and all forms or applications along with any supporting documentation necessary to obtain a certificate or other proof of Tax Exemption, as if Tenant were the owner of the Premises. Tenant shall take any and all actions necessary for Tenant to maintain its qualification for such Tax Exemption. If Tenant at any time during the Term is required to submit additional documentation to any Governmental Authority in order to maintain any Tax Exemption, then Tenant shall promptly submit such documentation. Landlord shall sign any form, consent or application required to be submitted to any Governmental Authority in order for Tenant to obtain proof of such Tax Exemption, provided that Landlord shall have a reasonable opportunity to review such form, consent or application, and provided that the information contained therein is accurate. Tenant shall promptly reimburse Landlord for all costs or expenses which Landlord may sustain or incur while acting pursuant to this Section 5.1(b)(i) or Section 5.3(b).

(ii) If the appropriate Governmental Authorities, solely because Tenant is not the fee owner of the Premises, refuse to process and review any forms or applications for

Tax Exemption filed by Tenant pursuant to Section 5.1(d)(i) or refuse to exercise jurisdiction over any application filed by Tenant pursuant to Section 5.1(d)(i), then Tenant shall be entitled to such exemption or abatement, for purposes of this Article 5, only if Tenant delivers to Landlord, at Tenant's sole expense, an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to Landlord, to the effect that Tenant would be entitled to Tax Exemption. Promptly upon request from Landlord, Tenant shall reimburse Landlord for Landlord's expenses incurred in connection with this Section 5.1(d)(i).

Section 5.2

(a) Tenant shall continue to pay the full amount of PILOT required under Section 5.1 notwithstanding that Tenant may have instituted tax assessment reduction or other actions or proceedings pursuant to Section 4.6 to reduce the assessed valuation of the Premises or any portion thereof. If any such tax reduction or other action or proceeding shall result in a final determination in Tenant's favor, Tenant shall be entitled to a credit against future PILOT to the extent, if any, that the amount previously paid on account of PILOT for the Tax Year for which such final determination was made exceeds the PILOT for said Tax Year. If at the time Tenant is entitled to receive such a credit New York City is paying interest on refunds of Taxes, Tenant's credit shall include interest at the rate then being paid by the City on such refunds of Taxes. In no event, however,

shall Tenant be entitled to any refund of any such excess from Landlord.

(b) If New York City shall, for any reason, fail to determine the assessed value of the Premises for any Tax Year during the Term, such assessed value shall be determined in accordance with the procedures set forth in Article XVII of the Master Lease, provided that, in making such determination, the appraisers shall take into consideration the equalization rates then applicable to comparable properties situated in the Borough of Manhattan, as well as any limitations on increases in assessed value for such comparable properties prescribed by applicable law. Landlord shall and shall cause Master' Landlord to permit Tenant and Tenant's representatives and witnesses, at Tenant's cost and expense, to participate in such procedures. Landlord, as tenant under the Master Lease, shall appoint as its appraiser under the Master Lease an appraiser designated by Tenant, provided the appraiser so designated is qualified to act as such pursuant to the Master Lease, and Tenant shall pay the fees and expenses payable by Landlord as such tenant in respect of the Premises pursuant to Section 17.02 of the Master Lease.

Section 5.3

(a) Except as provided to the contrary in Sections 5.1(c) and 5.3(c), Tenant acknowledges that by reason of the ownership by Landlord of the Building and all materials to be incorporated in the Building as provided in Section 14.6, certain sales and compensating use taxes will not be incurred in connection with

the construction of the Building. Tenant shall pay to Landlord, as payments in lieu of sales or compensating use taxes, an amount equal to the sales and compensating use taxes that would otherwise be payable if Landlord were not the owner of the Building and all materials to be incorporated in the Building (each such sum being hereinafter referred to as a "Payment in Lieu of Sales Taxes" or "PILOST") during the year that such sales and compensating use taxes would have been incurred. PILOST shall be payable to Landlord within thirty (30) days of the date that such sales and compensating use taxes would be due and payable to the person required to collect such taxes if Landlord were not the owner of the Building with all materials to be incorporated in the Building.

(b) All amounts required to be paid by Tenant pursuant to this Section 5.3 shall be deemed to be Rental. If Tenant is compelled by any Governmental Authority to pay any sales or compensating use tax in respect of materials incorporated (or to be incorporated) in the Building and as to which Tenant previously has made to Landlord payments in lieu of such taxes, Landlord shall permit Tenant to credit against the next succeeding monthly installment(s) of Rental Obligation an amount equal to the amount of such taxes (including interest and penalties) which Tenant has been compelled to pay, provided that (i) each Construction Agreement contains the provision set forth in Section 14.6(b), (ii) Tenant has notified Landlord prior to payment of such taxes and promptly upon receipt of notice of

claim that a claim has been made therefor, (iii) Tenant has provided Landlord with written evidence reasonably satisfactory to Landlord of such payment, (iv) if permitted by applicable law, Landlord has the opportunity to contest the imposition of same provided that neither Tenant's interest in the Premises nor any income derived by Tenant therefrom would, by reason of such contest, be forfeited or lost, or subject to any lien, encumbrance or charge, and Tenant would not by reason thereof be subject to any civil or criminal liability, and (v) in no event shall the credit allowed to Tenant hereunder exceed the amount of PILOST actually paid to Landlord pursuant to Section 5.3(a). Tenant, upon request by Landlord and at no cost or expense to Tenant, shall cooperate with any effort by Landlord to establish that, by reason of ownership of the Building by Landlord, no sales or compensating use tax is payable in respect of materials incorporated (or to be incorporated) in the Building.

(c) Tenant shall be entitled to the amount of exemptions or abatements or other relief with respect to PILOST, if any ("Sales Tax Exemption"), available to Tenant under any law, rule, regulation or code, including New York State Tax Law Section 1116(a)(4) and Section 11-2007 of the New York City Administrative Code, which now or hereafter grants abatements of or exemption or other relief from sales and compensating use taxes to a not-for-profit organization, provided that Tenant shall otherwise comply with all requirements of such law, rule, regulation or code.

Section 5.4 Tenant hereby represents to Landlord that Tenant would qualify for Tax Exemption if Tenant were the owner of the Premises and that Tenant qualifies for Sales Tax Exemption. Tenant shall take any and all actions necessary for Tenant to maintain such qualification as described in the preceding sentence. Tenant shall promptly notify Landlord of any revocation of such qualification or the existence of any grounds therefor. Tenant shall, prior to Commencement of Construction and thereafter promptly upon request by Landlord, provide Landlord with any certificate or other evidence satisfactory to Landlord of Tenant's entitlement to Tax Exemption and Sales Tax Exemption.

Section 5.5 Tenant shall promptly notify Landlord of any change in any requirements for Tax Exemption and of any change in any requirements for Sales Tax Exemption, provided that Tenant has notice or knowledge of such change. Tenant shall also promptly notify Landlord of the occurrence of any change in Tenant or in its purposes, activities or operations, or the occurrence of any other event, that could result in a change in Tenant's qualification for or entitlement to Tax Exemption or Sales Tax Exemption, including without limitation, any change in the purpose of Tenant as such purpose is described in Tenant's incorporation documents and bylaws, the application of any part of Tenant's income or earnings to the benefit of any private individual or officer, director or owner of Tenant, any activity by Tenant to influence legislation or any participation or

intervention by Tenant in any political campaign on behalf of any candidate for public office, or any use of the Premises for any purpose other than Museum Uses. Unless Tenant, in connection with any such change, has obtained a determination from the appropriate Governmental Authorities regarding Tenant's entitlement to Tax Exemption or Sales Tax Exemption, taking into account such change, Landlord shall be permitted at any time during the Term to notify any Governmental Authority of such change and request a determination concerning the effect thereof on Tax Exemption or Sales Tax Exemption. If no such determination is available from the appropriate Governmental Authorities with respect to Tax Exemption, either because they fail or refuse to exercise jurisdiction over such request or requests made by Tenant or Landlord, or otherwise, then Tenant shall be entitled to Tax Exemption only if Tenant delivers to Landlord, at Tenant's sole expense, an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to Landlord, to the effect that if it were the fee owner of the Premises, Tenant would continue to be entitled to such Tax Exemption. Promptly upon request from Landlord, Tenant shall reimburse Landlord for its reasonable expenses incurred in connection with this Section 5.5.

ARTICLE 6

DEPOSITS FOR IMPOSITIONS

Section 6.1

(a) In order to assure the payment of all Impositions, Tenant, upon the demand of Landlord at any time after the occurrence of an Event of Default hereunder, shall deposit with Depository on the first (1st) day of each month during the Term, an amount equal to one-twelfth (1/12th) of the annual Impositions then in effect.

(b) If at any time the monies so deposited by Tenant shall be insufficient to pay in full the next installment of Impositions then due, Tenant shall deposit the amount of the insufficiency with Depository to enable Depository to pay each installment of Impositions at least ten (10) days prior to the Due Date thereof.

(c) Depository shall hold the deposited monies in a special account for the purpose of paying the charges for which such amounts have been deposited as they become due, and Depository shall apply the deposited monies for such purpose not later than the Due Date for such charges. Amounts in such special account shall bear interest to the extent consistent with applicable laws and the practices of Depository.

(d) If at any time the amount of any Imposition is increased and the monthly deposits then being made by Tenant under this Section 6.1 would be insufficient to pay such Imposition no later than ten (10) days prior to the Due Date

thereof, the monthly deposits shall thereupon be increased and Tenant shall deposit immediately with Depository sufficient monies for the payment of the increased Imposition. Thereafter, the monthly payments shall be adjusted so that Depository shall receive from Tenant sufficient monies to pay each Imposition at least ten (10) days prior to the Due Date of such Imposition.

(e) Deposited monies for Impositions may be held by Depository in a single bank account. Depository shall not be obligated to use monies deposited for the payment of an Imposition not yet due and payable for the payment of an Imposition that is due and payable. Depository shall, at Landlord's option and direction and if Tenant shall fail to make any payment or perform any obligation required under this Lease, use any monies deposited pursuant to Article 4 or 6 for any item for the payment of any Rental.

(f) If this Lease shall be terminated by reason of any Event of Default or if dispossession occurs pursuant to Section 27.3(b) all deposited monies under this Article 6 then held by Depository shall be paid to and applied by Landlord in payment of any and all sums due under this Lease and Tenant shall promptly pay the resulting deficiency.

(g) Any interest paid on monies deposited pursuant to this Article 6 shall be applied pursuant to the foregoing provisions against amounts thereafter becoming due and payable by Tenant.

(h) Anything in this Article 6 to the contrary notwithstanding, if the Event of Default which gave rise to

Landlord having demanded that Tenant make deposits under this Section 6.1 shall have been cured by Tenant, then, upon the demand of Tenant, provided that Tenant is not then in Default under this Lease, all monies deposited under this Article 6 then held by Depository, with the interest, if any, accrued thereon, shall be returned to Tenant and Tenant shall not be required to make further deposits under this Article 6 unless and until there shall occur a subsequent Event of Default and Landlord shall make demand upon Tenant to make deposits for Impositions.

Section 6.2 If Landlord ceases to have any interest in the Premises, Landlord shall transfer to the Person who acquires such interest in the Premises, all of Landlord's rights with respect to the deposits made pursuant to Section 6.1. Upon such transfer and notice thereof to Tenant, the transferor shall be released from all liability with respect thereto, such transferee shall be deemed to have assumed from and after the date of such transfer all of Landlord's obligations with respect to such deposits and Tenant shall look solely to the transferee with respect thereto. The provisions hereof shall apply to each successive transfer of the deposits.

ARTICLE 7

[INTENTIONALLY OMITTED]

ARTICLE 8

INSURANCE

Section 8.1

(a) Tenant shall, at all times from and after Substantial Completion of the Building and thereafter throughout the Term:

- (i) keep the Premises and contents insured under an "All Risk of Physical Loss" form of policy, including, without limitation, coverage for loss or damage by water, flood, subsidence and earthquake and including fine arts floaters where applicable, valuable papers and records coverage including costs to restore information contained in such valuable papers and records, electronic data processing insurance for equipment and media, including costs to restore information contained in such media; such insurance to be written on an "Agreed Amount" basis, with full replacement costs, with the replacement value of the Premises to be determined from time to time, but not less frequently than required by the insurer and in any event at least once every three (3) years, it being agreed that no omission on the part of Landlord to request any such determination shall relieve Tenant of its obligation to determine the replacement value thereof (in the absence of such valuation, the FM (Factory Mutual) or IRI (Industrial Risk Insurers) Indices will be applied);
- (ii) provide and keep in force commercial general liability insurance against liability for bodily injury, death and

property damage, it being agreed that such insurance shall (A) be in an amount as may from time to time be reasonably required by Landlord, but not less than twenty million dollars (\$20,000,000) combined single limit inclusive of primary, umbrella and following form excess policies for liability for bodily injury, death and property damage, (B) include the Premises and all streets, alleys, sidewalks, curbs, passageways, open spaces or mapped public parkland adjoining or appurtenant to the Premises and under Tenant's control, (C) be of a blanket contractual nature and shall contain an agreement by the insurer to indemnify and hold harmless Landlord and Master Landlord from and against all cost, expense and/or liability (including, without limitation, attorneys' fees and disbursements) arising out of or based upon any and all claims, accidents, injuries and damages mentioned in Article 22 and arising from or attributable to Tenant's negligence or any other risk covered by such general liability insurance, and (D) also provide the following protection:

- (1) blanket automatic contractual liability to include bodily injury to others assumed by Tenant;
- (2) water damage legal liability; and
- (3) all coverages formerly provided under the broad form comprehensive general liability endorsement must be provided;

(iii) provide and keep in force workers' compensation, New York State disability and other statutory New York State insurance for all persons employed by Tenant at or in connection with the Premises;

(iv) provide and keep in force on an "Agreed Amount" basis rent insurance on an "All Risk of Physical Loss" basis in an amount not less than one (1) year's current Rental Obligation and PILOT (but no less than one hundred thousand dollars (\$100,000) in the first Lease Year increased each Lease Year by two percent (2%) over the amount in the preceding Lease Year) and Civic Facilities Payment ("Rent Insurance");

(v) provide and keep in force sprinkler leakage insurance if a sprinkler system shall be located in any portion of the Premises and if such system is not covered by the insurance required to be provided and kept in force pursuant to Section 8.1(a)(1), which sprinkler leakage insurance shall be in amounts approved by Landlord, which approval shall not be unreasonably withheld;

(vi) provide and keep in force boiler and machinery insurance in an amount as may from time to time be reasonably determined by Landlord but not less than replacement value of the equipment per accident on a combined basis covering direct property loss and loss of income and covering all steam, mechanical and electrical equipment, including without limitation, all boilers,

unfired pressure vessels, air conditioning equipment, elevators, piping and wiring;

(vii) provide and keep in force automobile liability insurance for all owned, non-owned, leased, rented and/or hired vehicles insuring against liability for bodily injury and death and for property damage in an amount as may from time to time be reasonably determined by Landlord but not less than five million dollars (\$5,000,000) combined single limit; and

(viii) provide and keep in force such other insurance in such amounts as may from time to time be reasonably required by Landlord against such other insurable hazards as at the time are commonly insured against by prudent owners of like buildings and improvements.

(b) All insurance provided by Tenant as required by Section 8.1(a) shall be primary to all other applicable insurance coverages and shall name Tenant as named insured and Landlord and Master Landlord as additional insureds to the extent, where applicable, of their respective insurable interests in the Premises. The coverage provided by Tenant as required by Sections 8.1(a)(i), 8.1(a)(ii), 8.1(a)(v), 8.1(a)(vi) and 8.1(a)(vii) also shall name each mortgagee referenced in the Master Lease as an insured under a standard mortgage clause, provided, however, any loss payable thereunder shall be payable as provided in this Lease. A joint loss agreement endorsement shall be obtained from each insurer providing insurance pursuant

to Section 8.1(a)(i) and 8.1(a)(vi) if such insurance is being provided by more than one insurer.

Section 8.2

(a) The loss under all policies required by any provision of this Lease insuring against damage to the Premises by fire or other casualty shall be payable to Depository, except that amounts of less than three hundred and fifty thousand dollars (\$350,000) shall be payable in trust directly to Tenant for application to the cost of Restoration in accordance with Article 9 hereof. Such amount shall be adjusted on the fifth (5th) anniversary of the Commencement Date and on each fifth (5th) anniversary of the date on which an adjustment is made pursuant to this Section 8.2(a) by adding to three hundred and fifty thousand dollars (\$350,000) an amount equal to the product of (x) three hundred and fifty thousand dollars (\$350,000) and (y) the percent of increase, if any, in the Consumer Price Index for the month in which the applicable anniversary date occurs over the Consumer Price Index for the month in which the Commencement Date occurs. Any dispute as to the calculation of such adjustment shall be determined by arbitration pursuant to Article 39. Rent insurance shall be carried in favor of Landlord, but the proceeds thereof to the extent required hereunder shall be paid to Depository and shall be applied to the Rental payable by Tenant under this Lease until completion of such Restoration by Tenant.

All insurance required by any provision of this Lease shall be in such form and shall be issued by such responsible companies as are rated A X 11 or better by A.M. Best Company, are authorized to do business in the State of New York and are otherwise reasonably acceptable to Landlord. All policies referred to in this Lease shall be procured, or caused to be procured, by Tenant, at no expense to Landlord, and for periods of not less than one (1) year. Subject to Section 8.4 hereof, duplicate originals of such policies shall be delivered to Landlord immediately upon receipt from the insurance company or companies, together with proof satisfactory to Landlord that their current installment of the premiums thereon have been paid, provided that Landlord shall not, by reason of custody of such policies, be deemed to have knowledge of the contents thereof. New or renewal policies replacing any policies expiring during the Term or duplicate originals thereof, shall be delivered as aforesaid at least ten (10) days before the date of expiration, together with proof satisfactory to Landlord that the full premiums thereon have been paid, or if such proof has been so delivered, the replacement policy may be delivered within ten (10) days after such expiration date. Premiums on policies may be paid in installments or otherwise financed, provided that such payment or financing does not result in any right or privilege of surrendering or cancelling the policies or reducing the amount of loss payable thereunder.

(b) Tenant and Landlord shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss and Tenant and Landlord shall execute and deliver such proofs of loss and other instruments as may be required for the purpose of obtaining the recovery of any such insurance moneys. Tenant shall promptly reimburse Landlord for any and all reasonable costs or expenses which Landlord may sustain or incur in connection therewith.

(c) Tenant shall not carry separate insurance (other than personal injury liability insurance) concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Landlord and Master Landlord are included therein as named insureds with loss payable as provided in this Lease. Tenant immediately shall notify Landlord of the carrying of any such separate insurance and shall cause the policies therefor or duplicate originals thereof to be delivered as required in this Lease.

(d) All property insurance policies as required by this Lease shall provide in substance that all adjustments for claims with the insurers in excess of three hundred and fifty thousand dollars (\$350,000) (as such amount shall be increased as provided in Section 8.2(a)) shall be made with Landlord and Tenant. Any adjustments for claims with the insurers involving sums of less than three hundred and fifty thousand dollars (\$350,000) (as such amount shall be increased as provided in Section 8.2(a)) shall be made with Tenant.

(e) All Rent Insurance shall provide in substance that all adjustments for claims with the insurers shall be made with Landlord and Tenant.

(f) Tenant shall not violate or permit to be violated any of the conditions or provisions of any insurance policy required hereunder, and Tenant shall perform and satisfy or cause to be performed and satisfied the requirements of the companies writing such policies.

(g) Each policy of insurance required to be obtained by Tenant as herein provided shall contain to the extent obtainable at reasonable cost (i) provisions to the effect that no omission or negligence of Tenant or any other named insured shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, and to the effect that no act or any violation of warranties, declarations or conditions by Tenant or any other named insured shall affect the coverage afforded to any named insured other than Tenant, (ii) an agreement by the insurer that such policy shall not be cancelled or modified without at least thirty (30) days' prior written notice to Landlord, (iii) an agreement that the coverage afforded by the insurance policy shall not be affected by the performance of any work in or about the Premises or the occupation or use of the Premises as permitted under this Lease, (iv) a waiver by the insurer of any claim for insurance premiums against Landlord or any named insured other than Tenant, and (v) a waiver of subrogation by the insurers of any right to recover the amount of

any loss resulting from the negligence of Tenant, Landlord, their agents, employees or licensees.

(h) All liability insurance required to be provided and kept in force by Tenant under this Lease shall be written on an "Occurrence" basis, provided, however, that if (i) a basis other than such "Occurrence" basis shall be adopted throughout the insurance industry and (ii) such other basis shall be accepted by most prudent owners of like buildings and improvements, then Tenant may provide and keep in force liability insurance written on such other basis satisfactory to Landlord.

Section 8.3

(a) Tenant, on the demand of Landlord after the occurrence of an Event of Default hereunder, shall deposit with Depository on the first (1st) day of each month during the Term, an amount equal to one-twelfth (1/12th) of the annual insurance premiums required to be carried by Tenant hereunder, as estimated by Landlord. If at any time the insurance premiums shall be increased or Landlord receives information that the insurance premiums will be increased, and the monthly deposits being paid by Tenant under this Section 8.3(a) would be insufficient to pay such insurance premiums ten (10) days prior to the due date, the monthly deposits shall thereupon be increased and Tenant shall, within fifteen (15) days after Landlord's demand, deposit with Depository sufficient monies for the payment of the increased insurance premiums. Thereafter, the monthly deposits shall be adjusted so that Depository shall receive from Tenant sufficient

monies to pay the insurance premiums at least ten (10) days before the insurance premiums become due and payable.

(b) Anything in Section 8.3(a) to the contrary notwithstanding, if the Event of Default which gave rise to Landlord having demanded that Tenant make deposits under Section 8.3(a) shall have been cured by Tenant, then, upon the demand of Tenant, provided that Tenant is not then in Default under this Lease, all monies deposited under Section 8.3(a) then held by Depository, together with the interest, if any, accrued thereon, shall be returned to Tenant and Tenant shall not be required to make further deposits under Section 8.3(a) unless and until there shall occur a subsequent Event of Default and Landlord shall make demand upon Tenant to make deposits under Section 8.3(a).

Section 8.4 The insurance required by this Lease, at the option of Tenant, may be effected by blanket or umbrella policies issued to Tenant covering the Premises and other properties owned or leased by Tenant, provided that the policies otherwise comply with the provisions of this Lease and specifically allocate to the Premises the coverages required hereby, without possibility of reduction of insurance coverage by reason of, or damage to, any other premises named therein, and if the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Landlord certified copies or duplicate originals of such policies in place of the originals, with schedules thereto attached showing the amount of insurance

afforded by such policies applicable to the Premises, and in addition, within thirty (30) days after the filing thereof with any insurance ratemaking body, copies of the schedule of all improvements affected by any such blanket or umbrella policy of insurance.

Section 8.5 Notwithstanding anything herein contained to the contrary, in addition to the insurance required to be maintained by Tenant under this Article 8, Tenant shall provide and keep in force insurance of the type and at least in the amounts required under the Master Lease.

ARTICLE 9
USE OF INSURANCE PROCEEDS

Section 9.1

(a) If all or any part of any of the Premises shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant shall give to Landlord prompt notice thereof and shall furnish Landlord with an estimate of the cost of repairs, alterations, restorations, replacements and rebuilding (collectively, "Restoration"), which estimate shall be prepared by a licensed professional engineer or registered architect approved by Landlord, which approval shall not be unreasonably withheld. Landlord shall be entitled at its election after reasonable notice to Tenant, and at Landlord's cost and expense, to engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Restoration. If there is any dispute as to the estimated cost of the Restoration, such dispute shall be resolved by arbitration in accordance with the provisions of Article 39.

(b) After any destruction of or damage to the Premises as described in Section 9.1(a), Tenant shall, at Tenant's sole cost and expense, whether or not such damage or destruction shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient for the purpose of such Restoration, with reasonable diligence (subject to Unavoidable Delays) repair,

alter, restore, replace and rebuild (collectively, "Restore") the same, at least to the extent of the value and as nearly as possible to the condition, quality and class of the Premises existing immediately prior to such occurrence, with such changes or alterations as Tenant, with the consent of Landlord, which consent shall not be unreasonably withheld, shall elect to make, provided that, after the Restoration, the Premises are in conformity with the Master Development Plan and the Design Guidelines. Landlord in no event shall be obligated to Restore the Premises or any portion thereof or to pay any of the costs or expenses thereof. If Tenant shall fail or neglect to Restore with reasonable diligence (subject to Unavoidable Delays) the Premises or the portion thereof so damaged or destroyed, or having so commenced such Restoration, shall fail to complete the same with reasonable diligence (subject to Unavoidable Delays) in accordance with the terms of this Lease, or if prior to the completion of any such Restoration by Tenant, this Lease shall expire or be terminated for any reason, Landlord may, but shall not be required to, complete such Restoration at Tenant's expense. Each such Restoration shall be done in accordance with the provisions of this Lease. Tenant shall account to Landlord for all amounts spent in connection with any Restoration which was undertaken, and if this Lease shall expire or be terminated prior to the completion of any Restoration, Tenant shall pay over to Landlord, within fifteen (15) days after demand, the remainder, if any, of all Restoration Funds. Tenant's

obligations under this Section 9.1 shall survive the expiration or termination of this Lease.

Section 9.2

(a) Subject to the provisions of Sections 9.3, 9.4 and, if applicable, 9.5, Depository shall pay over to Tenant from time to time, upon the following terms, any monies which may be received by Depository from insurance provided by Tenant or cash or the proceeds of any security deposited with Depository pursuant to Section 9.5 (collectively, the "Restoration Funds"); provided, however, that Depository, before paying such moneys over to Tenant, shall be entitled to reimburse itself and Landlord therefrom to the extent, if any, of the necessary, reasonable and proper expenses (including reasonable attorney's fees) paid or incurred by Depository and Landlord in the collection of such monies. All Restoration Funds paid by Depository to Tenant, as herein provided, shall be used solely for the purpose of the Restoration until the Restoration is completed and fully paid for.

(b) Subject to the provisions of Sections 9.3, 9.4 and, if applicable, 9.5, the Restoration Funds shall be paid to Tenant in installments as the Restoration progresses, upon application to be submitted by Tenant to Depository and Landlord showing the cost of labor and materials purchased and delivered to the Premises for incorporation in the Restoration, or incorporated therein since the last previous application, and due and payable or paid by Tenant. If any vendor's, mechanic's, laborer's, or

materialman's lien is filed against the Premises or any part thereof, or if any public improvement lien relating to the Restoration of the Premises is created or permitted to be created by Tenant and is filed against Landlord, or any assets of, or funds appropriated to, Landlord, Tenant shall not be entitled to receive any further installment until such lien is satisfied or discharged (by bonding or otherwise). Notwithstanding the foregoing, subject to the provisions of Section 9.2(c), the existence of any such lien shall not preclude Tenant from receiving any installment of Restoration Funds, provided such lien will be discharged with funds from such installment.

(c) The amount of any installment to be paid to Tenant under Section 9.2(b) shall be (i) the product of (x) the total Restoration Funds and (y) a fraction the numerator of which is all costs incurred by Tenant in the Restoration in accordance with this Lease, not including all payment retention with contractors performing the Restoration, which payment retention shall not be less than ten percent (10%) until completion of fifty percent (50%) of the Restoration and the denominator of which is the total estimated cost of the Restoration, determined in accordance with Section 9.1(a), less (ii) all payments theretofore made to Tenant out of the Restoration Funds.

(d) Upon completion of and payment for the Restoration by Tenant, the balance of the Restoration Funds shall be paid over to Tenant.

(e) Notwithstanding the foregoing, if Landlord makes the Restoration at Tenant's expense, as provided in Section 9.1, then Depository shall pay over the Restoration Funds to Landlord, upon request, to the extent not previously paid to Tenant pursuant to this Section 9.2, and Tenant shall pay to Landlord, within ten (10) days after demand, any sums in excess of the portion of the Restoration Funds received by Landlord necessary to complete the Restoration. Upon completion of the Restoration, Landlord shall deliver to Tenant a certificate, in reasonable detail, setting forth the expenditures made by Landlord for such Restoration.

Section 9.3 The following shall be conditions precedent to each payment made to Tenant as provided in Section 9.2 above:

(a) there shall be submitted to Depository and Landlord the certificate of the aforesaid engineer or architect approved by Landlord pursuant to Section 9.1(a) stating that (i) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of said certificate, (ii) no part of such expenditures has been or is being made the basis, in any previous or then pending

requisition, for the withdrawal of the Restoration Funds or has been made out of the Restoration Funds received by Tenant, (iii) the sum then requested does not exceed the value of the services and materials described in the certificate, and (iv) the balance of the Restoration Funds held by Depository will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion;

(b) there shall be furnished to Landlord a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any part thereof, or any public improvement lien with respect to the Premises or the Restoration affecting Landlord, or the assets of, or funds appropriated to, Landlord, which has not been discharged of record (by bonding or otherwise) except such as will be discharged upon payment of the requisite amount out of the sum then requested to be withdrawn; and

(c) at the time of making such payment, there is no existing and unremedied Event of Default on the part of Tenant.

Section 9.4

(a) If any loss, damage or destruction occurs, the estimated cost of Restoration of which equals or exceeds three hundred and fifty thousand dollars (\$350,000) in the aggregate, determined as provided in Section 9.1(a) (as such amount shall be

increased as provided in Section 8.2(a)), Tenant shall furnish to Landlord the following:

(i) at least thirty (30) Business Days prior to commencement of such Restoration, complete plans and specifications for the Restoration, prepared by a licensed professional engineer or registered architect approved by Landlord, which approval shall not be unreasonably withheld, together with the approval thereof and any required permits issued by any Governmental Authority with respect to the Restoration, all of the foregoing to be subject to Landlord's review and approval for conformity with the Master Development Plan and the Design Guidelines; all such plans and specifications and other materials for the Restoration shall become the sole and absolute property of Landlord if for any reason this Lease shall be terminated;

(ii) at least ten (10) Business Days prior to commencement of such Restoration, (x) a contract reasonably satisfactory to Landlord in form assignable to Landlord, made with a reputable and responsible contractor approved by Landlord, which approval shall not be unreasonably withheld, providing for the completion of the Restoration in accordance with the plans and specifications referred to in the preceding clause (i), as approved by Landlord, and (y) payment and performance bonds in forms and by sureties satisfactory to Landlord, naming the contractor as obligor and Landlord and Tenant, as obligees, each in a penal sum

equal to no less than the estimated cost of the Restoration, or, in lieu thereof, such other security as shall be reasonably satisfactory to Landlord; and

(iii) at least ten (10) Business Days prior to commencement of such Restoration, an assignment to Landlord of the contract so furnished and the bonds, if any, provided thereunder, such assignment to be duly executed and acknowledged by Tenant and by its terms to be effective only upon the occurrence of an Event of Default under this Lease or upon Landlord's re-entry upon the Premises following an Event of Default prior to the complete performance of such contract, such assignment also to include the benefit of all payments made on account of said contract including payments made prior to the effective date of such assignment.

(b) Regardless of the cost or the estimated cost of any Restoration, to the extent that any Restoration involves work on the exterior of the Building or a change in the height, bulk or setback of the Building from the height, bulk or setback existing immediately prior to the damage or destruction, or any change to the interior of the Building that affects the size, types of possible use, or character of the Public Areas, or in any manner relating to or affecting compliance with the Master Development Plan or the Design Guidelines, or, in the event such Restoration is commenced within ten (10) years from the date the Building shall have been Substantially Completed, the Construction Documents and "as built" plans, then Tenant shall furnish to

Landlord at least thirty (30) Business Days prior to commencement of the Restoration a complete set of plans and specifications for the Restoration, as provided in Section 9.4(a)(i), and all of the provisions of Section 9.4(a) shall apply to such Restoration.

(c) In the event Tenant shall desire to modify the plans and specifications which Landlord theretofore has approved pursuant to Section 9.4(a)(i), or pursuant to Section 9.4(b) with respect to, or which will in any way affect, any aspect of the exterior of the Building, the height, bulk or setback of the Building or the interior of the Building relating to the size, types of possible use, or character of the Public Areas, or which will affect compliance with the Design Guidelines or the Master Development Plan, or, in the event such Restoration is commenced within ten (10) years from the date the Building shall have been Substantially Completed, the Construction Documents and "as built" plans, Tenant shall submit the proposed modifications to Landlord. Landlord shall review the proposed modifications to determine whether or not they (i) conform to the Master Development Plan and the Design Guidelines, Construction Documents and "as built" plans and (ii) provide for design, finishes and materials which are consistent with and comparable in quality to those provided for in the previously approved plans and specifications, and shall approve such proposed modifications if they do so conform and so provide. If Landlord reasonably determines that the proposed modifications are not satisfactory in light of the above criteria, Landlord shall so advise Tenant,

specifying in what respect the plans and specifications, as so modified, do not conform to the Master Development Plan or the Design Guidelines, Construction Documents and "as built" plans or do not provide for design, finishes and materials which are consistent with and comparable in quality to those provided for in the previously approved plans and specifications. Within twenty (20) Business Days after Landlord shall have so notified Tenant, Tenant shall revise the plans and specifications so as to meet Landlord's objections and shall deliver same to Landlord for review. Each review by Landlord shall be carried out within fifteen (15) Business Days of the date of delivery of the plans and specifications, as so revised (or one or more portions thereof), by Tenant, and if Landlord shall not have notified Tenant of its determination within such fifteen (15) Business Day period, it shall be deemed to have determined that the proposed modifications are satisfactory. Landlord shall not review portions of the previously approved plans and specifications which Landlord has previously determined to be satisfactory, provided same have not been changed by Tenant.

Section 9.5 If the estimated cost of any Restoration, determined as provided in Section 9.1(a), exceeds both (i) three hundred and fifty thousand dollars (\$350,000) (as such amount shall be increased as provided in Section 8.2(a)) and (ii) the net insurance proceeds, then, prior to the commencement of such Restoration, Tenant shall deposit with Depository, as security for completion of the Restoration, a bond, cash or other security

satisfactory to Landlord in the amount of such excess, to be held and applied by Depository in accordance with the provisions of Section 9.2.

Section 9.6 This Lease shall not terminate or be forfeited or be affected in any manner, and there shall be no reduction or abatement of the Rental payable hereunder, by reason of damage to or total, substantial or partial destruction of the Premises or any part thereof or by reason of the untenability of the same or any part thereof, for or due to any reason or cause whatsoever, and Tenant, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender the Premises or any part thereof. Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of Rental, shall continue as though the Premises had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

Section 9.7 If for any completed Restoration Tenant has not theretofore delivered same to Landlord, Tenant shall deliver to Landlord, within thirty (30) days of the completion of such Restoration, a complete set of "as built" plans thereof together with a statement in writing from a registered architect or licensed professional engineer that such plans are complete and correct.

ARTICLE 10
CONDEMNATION

Section 10.1

(a) If the whole or substantially all of the Premises shall be taken (excluding a taking of the fee interest in the Premises, or any leasehold interest superior to that of Tenant's, if after such taking, Tenant's rights under this Lease are not affected) for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease and the Term shall terminate and expire on the date of such taking and the Rental payable by Tenant hereunder shall be equitably apportioned as of the date of such taking.

(b) The term "substantially all of the Premises" shall mean such portion of the Premises as, when so taken, would leave remaining a balance of the Premises which, due either to the area so taken or the location of this part so taken in relation to the part not so taken, would not, under economic conditions, applicable zoning laws, building regulations then existing or prevailing or the Master Development Plan, and after performance by Tenant of all covenants, agreements, terms and provisions contained herein or by law required to be observed or performed by Tenant, permit the Tenant to continue the feasible operation of the Premises. If there be any dispute as to whether or not "substantially all of the Premises" has been taken, such dispute

shall be resolved by arbitration in accordance with the provisions of Article 39.

(c) If the whole or substantially all of the Premises shall be taken or condemned as provided in Section 10.1(a), the award, awards or damages in respect thereof shall be apportioned as follows: (i) there shall first be paid to Landlord so much of the award which is for or attributable to the value of (A) the Land, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord, and (B) Landlord's Civic Facilities on the Premises; (ii) there shall next be paid to Landlord so much of the award that is for or attributable to the value of the Building and bears the same ratio to the total of such portion of the award as the amount of the Maximum Construction Payment at such time bears to the sum of the Maximum Construction Payment at such time and the total amounts expended by Tenant from other sources in connection with Tenant's obligation to construct the Building in accordance with the provisions of this Lease; and (iii) the balance of such award, awards and damages shall be paid to Tenant. If there be any dispute as to which portion of the award is attributable to the Land and Landlord's Civic Facilities and which portion is attributable to the Building, or as to the amount of Landlord's and Tenant's respective contributions to the cost of construction of the Building, such dispute shall be resolved by arbitration in accordance with the provisions of Article 39.

(d) Each of the parties shall execute any and all documents that may be reasonably required in order to facilitate collection by them of such awards.

Section 10.2 For purposes of this Article 10, the "date of taking" shall be deemed to be the earlier of (i) the date on which actual possession of the whole or substantially all of the Premises, or a part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of the applicable federal or New York State law or (ii) the date on which title to the Premises or the aforesaid portion thereof shall have vested in any lawful power or authority pursuant to the provisions of the applicable federal or New York State law.

Section 10.3 If less than substantially all of the Premises shall be so taken, this Lease and the Term shall continue as to the portion of the Premises remaining without abatement of Rental or diminution of any of Tenant's obligations hereunder. Tenant, whether or not the award or awards, if any, shall be sufficient for the purpose, shall (subject to Unavoidable Delays) proceed diligently to Restore any remaining part of the Premises not so taken so that to the extent reasonably practical, the latter shall be complete, operable, self-contained architectural units in good condition and repair and capable of being used for the Museum Uses in conformity with this Lease, the Master Development Plan, the Design Guidelines and, to the extent reasonably practicable, in the event such Restoration is commenced within ten (10) years from the date the Building shall have been

Substantially Completed, the Construction Documents and the "as built" plans. In the event of any taking pursuant to this Section 10.3, the entire award attributable to the Land taken, considered as unimproved and unencumbered by this Lease and the Master Lease and the fair market value of Landlord's Civic Facilities in any proceeding with respect to such taking, shall be first paid to Landlord, and the balance of the award, if any, shall be paid to Depository, except that if such award shall be less than two hundred and fifty thousand dollars (\$250,000) (as such amount shall be increased as provided in Section 8.2(a)), such balance shall be payable, in trust, to Tenant (provided that if the Master Lease requires payment in trust to Landlord or a mortgagee, such award shall be paid as provided therein) for application to the cost of Restoration of the part of the Premises not so taken. Subject to the provisions and limitations in this Article 10, Depository shall make available to Tenant as much of that portion of the award actually received and held by Depository, if any, less all necessary and proper expenses paid or incurred by Depository and Landlord in the condemnation proceedings, as may be necessary to pay the cost of Restoration of the part of the Premises remaining. Such Restoration shall be done in accordance with and subject to the provisions of Article 2. Payments to Tenant as aforesaid shall be disbursed in the manner and subject to the conditions set forth in Article 2. Any balance of the award held by Depository and any cash and the proceeds of any security deposited with Depository pursuant to

Section 10.4 remaining after completion of the Restoration shall be paid to Tenant. Each of the parties shall execute any and all documents that may be reasonably required in order to facilitate collection by them of such awards.

Section 10.4 In the case of any Restoration required by the terms of Section 10.3, the cost of which, as determined in the manner set forth in Section 9.1(a), exceeds both (i) two hundred and fifty thousand dollars (\$250,000) (as such amount shall be increased as provided in Section 8.2(a)) and (ii) the balance of the condemnation award after payment of the expenses set forth in Section 10.3, Tenant shall, prior to the commencement of such Restoration, deposit with Depository a bond, cash or other security satisfactory to Landlord in the amount of such excess, to be held and applied by Depository in accordance with the provisions of Section 10.3, as security for the completion of the Restoration.

Section 10.5 If the temporary use of the whole or any part of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give prompt notice thereof to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, and Tenant shall be entitled to receive for itself any award or payments for such use, provided, however, that:

(a) if the taking is for a period not extending beyond the Term and if such award or payment is made less frequently than in quarterly installments, the same shall be paid to and held by Depository as a fund which Depository shall apply from time to time to the payment of Rental, except that, if such taking results in changes or alterations in the Premises which would necessitate an expenditure to Restore such Premises to their former condition, then, a portion of such award or payment considered by Landlord, in its reasonable opinion, as appropriate to cover the expenses of the Restoration shall be retained by Depository, without application as aforesaid, and applied and paid over toward the Restoration of such Premises to their former condition, substantially in the same manner and subject to the same conditions as provided in Section 10.3; and any portion of such award or payment which shall not be required pursuant to this Section 10.5(a) to be applied to the Restoration of the Premises or to the payment of Rental until the end of the Term (or, if the taking is for a period terminating prior to the end of the Term, until the end of such period), shall be paid to Tenant; or

(b) if the taking is for a period extending beyond the Term, such award or payment shall be apportioned between Landlord and Tenant as of the Expiration Date, and Landlord's and Tenant's share thereof, if paid less

frequently than in quarterly installments, shall be paid to Depository and applied in accordance with the provisions of Section 10.5(a), provided, however, that the amount of any award or payment allowed or retained for the Restoration of the Premises and not previously applied for such purpose shall remain the property of Landload if this Lease shall expire prior to such Restoration.

Section 10.6 In case of any governmental action not resulting in the taking or condemnation of any portion of the Premises but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, this Lease shall continue in full force and effect without reduction or abatement of Rental and the entire award shall be paid to Landlord.

Section 10.7 In the event of negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation.

Section 10.8 Landlord and Tenant shall be entitled to file a claim and otherwise participate in any condemnation or similar proceeding and all hearings, trials and appeals in respect thereof.

Section 10.9 Notwithstanding anything to the contrary contained in this Article 10, in the event of any permanent or temporary taking of all or any part of the Premises, Tenant shall have the exclusive right to assert claims for any trade fixtures and personal property so taken which were the property of Tenant

(but not including any Equipment) and for relocation expenses of Tenant, and all awards and damages in respect thereof shall belong to Tenant, and Landlord hereby waives any and all claims to any part thereof; provided, however, that if there shall be no separate award or allocation for such trade fixtures or personal property, then such claims of Tenant, or awards and damages, shall be subject and subordinate to Landlord's claims under this Article 10.

ARTICLE 11

TRANSFER, ASSIGNMENT, SUBLETTING, ETC.

Section 11.1 Neither this Lease nor any interest of Tenant in this Lease shall be sold, assigned, or otherwise transferred, whether by operation of law or otherwise, and Tenant shall not mortgage or otherwise encumber this Lease or any interest of Tenant in this Lease. The incorporation documents and bylaws of any corporation which, directly or indirectly, is Tenant shall not be changed in any manner which would change the purposes or control of Tenant, nor shall there be any merger or consolidation of such corporation into or with another corporation (any such change, merger or consolidation being herein referred to as a "Transfer"). Tenant shall not sublet all of any portion of the Premises, without the written consent of Landlord in each case, which consent may be withheld by Landlord in its discretion for any reason or no reason whatsoever. No person shall serve as an officer or director of Tenant if the person has been convicted of a felony, or for any other reason has been disqualified from, or otherwise restricted or limited in, entering into transactions or doing business with New York City, the State of New York or any public corporation under the laws of the State of New York.

Section 11.2 No subletting of the Premises shall have any validity except upon compliance with the provisions of this Article 11.

Section 11.3 Any consent by Landlord under Section 11.1 shall apply only to the specific transaction thereby authorized

and shall not relieve Tenant from any requirement hereunder of obtaining the consent of Landlord to any other transaction.

Section 11.4 If Tenant receives Landlord's written consent, which consent shall not unreasonably be withheld or delayed, and subject to the provisions of this Section 11.4, Tenant may enter into agreements for the rental of accessory space of one thousand (1,000) square feet or less in the Building, or the occupancy of such space pursuant to licenses or concessions, for periods of eighteen (18) months or less during the Term (all of such agreements being herein referred to collectively as "Subleases," and the occupants pursuant to Subleases as "Subtenants"). Each Sublease shall obligate the Subtenant pursuant thereto to occupy and use the premises included therein for purposes in accordance and consistent with this Lease, the Master Development Plan, the Design Guidelines, the Requirements, the Master Lease and the Certificate of Occupancy. Tenant shall deliver to Landlord all documents and information about any proposed Subtenant and Sublease as Landlord may reasonably require. Tenant shall promptly and diligently enforce all of its rights as the sublandlord under all Subleases in accordance with the terms thereof.

Section 11.5 Notwithstanding the provision for Landlord consent contained in Section 11.1, and the space and time period limitations contained in Section 11.4, Tenant may permit a qualified non-profit organization or non-profit organizations, other than Tenant, to use a portion or portions of the Building,

not to exceed at any time twelve thousand (12,000) square feet of space in the aggregate, for public exhibitions consistent with Museum Uses and subject to all other provisions of this Lease. Any such qualified non-profit organization shall be deemed a Subtenant under this Lease, and the agreement under which Tenant permits any such non-profit organization to use a portion or portions of the Building shall be deemed a Sublease under this Lease.

Use of the Building by a qualified non-profit organization or organizations as described in the previous paragraph shall be subject to Landlord's prior written notice to Tenant stating that in Landlord's reasonable judgment, the purposes, activities, past conduct, financial resources and reputation of the non-profit organization or organizations are such that it is appropriate for such organization or organizations to use a portion or portions of the Building. Landlord acknowledges that as of the Commencement Date, Yeshiva University, located at 500 West 185th Street, New York, New York, meets the requirements of the preceding sentence. The use of a portion or portions of the Building pursuant to this Section 11.5 by Yeshiva University or any other non-profit organization or organizations shall be subject to review by Landlord on the first and on each subsequent anniversary of the Commencement Date in the case of Yeshiva University, and in all other cases, on such anniversary of the date of Landlord's notice described in the first sentence of this paragraph. Within ninety (90) days after each such review,

Landlord may notify Tenant that any such use is required to terminate one hundred eighty (180) days after Tenant is so notified if in Landlord's reasonable judgment the purposes, activities, past conduct, financial resources or reputation of such non-profit organization or organizations shall be such that it is no longer appropriate for such organization or organizations to use a portion or portions of the Building.

Section 11.6 The fact that a violation or breach of any of the terms, provisions or conditions of this Lease or of the Master Lease results from or is caused by an act or omission by any Subtenant or subtenant of a Subtenant or any other occupant of the Building shall not relieve Tenant of Tenant's obligation to cure the same. Tenant shall take any and all reasonable steps necessary to prevent any such violation or breach.

Section 11.7 Landlord, during the continuance of an Event of Default by Tenant, may collect subrent and all other sums due under Subleases, and apply the net amount collected to Rental, but no such collection shall be, or be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease or the acceptance by Landlord of any Subtenant as tenant hereunder, or a release of Tenant from performance by Tenant of its obligations under this Lease.

Section 11.8 To secure the prompt and full payment by Tenant of the Rental and the faithful performance by Tenant of all the other terms and conditions herein contained on its part to be kept and performed, Tenant hereby assigns, transfers and

sets over unto Landlord all of Tenant's right, title and interest in and to all Subleases and hereby confers upon Landlord, its agents and representatives, a right of entry in, and sufficient possession of, the Premises to permit and insure the collection by Landlord of the rentals and other sums payable under the Subleases. The exercise of the right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Premises or any portion thereof and should said right of entry and possession be denied Landlord, its agent or representative, Landlord, in the exercise of said right, may use all requisite force to gain and enjoy the same without responsibility or liability to Tenant, its servants, employees, guests or invitees or any Person whomsoever; provided, however, that such assignment shall become operative and effective only if (a) an Event of Default shall occur and remain uncured, or (b) this Lease and the Term shall be cancelled or terminated pursuant to the terms, covenants and conditions hereof, or (c) there occurs repossession under a dispossession warrant or other re-entry or repossession by Landlord under the provisions hereof or applicable law, and then only as to such of the Subleases that Landlord has agreed to take over and assume.

Section 11.9 At any time and from time to time, upon Landlord's demand, Tenant promptly shall deliver to Landlord a schedule of all Subleases, setting forth the names of all Subtenants, the commencement and expiration dates of such Subleases and the rental payable thereunder and any additional information

with respect thereto that Landlord shall reasonably request. Upon the reasonable request of Landlord, Tenant shall permit Landlord and its agents and representatives to inspect all Subleases (including all amendments and changes thereto) and, at Landlord's expense, to make copies thereof.

Section 11.10 All Subleases shall provide that (a) they are subject to this Lease and to the Master Lease, (b) the Subtenants will not pay rent or other sums under the Subleases for more than one (1) month in advance (excluding security and other deposits required under such Sublease), and (c) at Landlord's option, on the termination of this Lease pursuant to Article 27, the Subtenants will attorn to, or enter into a direct sublease on identical terms with, Landlord.

ARTICLE 12

DEPOSITS INTO AND ADVANCES AND
OTHER WITHDRAWALS FROM TRUST ACCOUNT

consistent with
the certificate
of Landlord

Section 12.1

(attached hereto as part of Exhibit

(a) Simultaneously with the execution of this Lease, Tenant has submitted to Landlord and Landlord has approved a budget of Allowable Costs as of the date of execution of this Lease, a copy of which is attached hereto as Exhibit D (said budget of

Allowable Costs, as the same may change at any time and from time to time during the Term (but not later than the End Date) in

accordance with this Article 12 is referred to herein as the "AC Budget"). *the earlier of fifteen (15) days after Commencement or Construction or*

Within thirty (30) days after the date of execution of this Lease, Tenant shall deposit One Million Dollars (\$1,000,000)

("Initial Tenant Deposit") into an account with Trustee to be held in trust in accordance with this Article 12 (said account is referred to herein as the "Trust Account"). Within ten (10) days after each of the conditions set forth in clauses (i), (ii) and (iii) of the next sentence shall have been satisfied, Landlord shall deposit into the Trust Account Four Million Dollars

(\$4,000,000) ("Initial Landlord Deposit") to be held in trust in accordance with this Article 12. Landlord shall deposit into the Trust Account the Initial Landlord Deposit in accordance with the preceding sentence only if (i) no Default shall then exist and remain uncured, (ii) Tenant shall have theretofore deposited into the Trust Account the Initial Tenant Deposit, and (iii) Tenant

shall have delivered to Landlord (aa) evidence reasonably satisfactory to Landlord that Tenant has paid all outstanding obligations of Tenant to Chase Manhattan Bank, N.A. and (bb) evidence reasonably satisfactory to Landlord that Tenant has entered into agreements or has made other arrangements satisfactory to Landlord for the payment of all other debts of Tenant of which Tenant has advised Landlord and that Tenant is in compliance with its obligations then required to be performed under such agreements or other arrangements.

On or before the Construction Commencement Date, Tenant shall deposit into the Trust Account an additional One Million Dollars (\$1,000,000) (the "First Interim Tenant Deposit") to be held in trust in accordance with this Article 12. Provided that no Default shall then exist and remain uncured and that Tenant shall have made the First Interim Tenant Deposit and subject to the provisions of Section 12.1(b), Landlord shall, within ten (10) days after Tenant shall have made the First Interim Tenant Deposit, deposit into the Trust Account an additional One Million Dollars (\$1,000,000) (the "First Interim Landlord Deposit") to be held in trust in accordance with this Article 12. All further deposits into the Trust Account by either Landlord or Tenant shall be held in trust in accordance with this Article 12.

Tenant shall deposit into the Trust Account (1) One Million Dollars (\$1,000,000) within thirty (30) days after the Construction Commencement Date, and (2) an amount equal to the sum of fifty percent (50%) of any excess of the AC Budget above

Twelve Million Dollars (\$12,000,000), but not more than Twenty Million Dollars (\$20,000,000), and one hundred percent (100%) of any excess of the AC Budget above Twenty Million Dollars (\$20,000,000), which amount Tenant shall deposit into the Trust Account in a single deposit or in multiple deposits, as hereinafter provided, such deposits to be made no later than sixty (60) days after the Construction Commencement Date, and no later than every thirty (30) days following said sixty (60) days, with each such deposit under this clause (2) being no less than the lesser of One Million Dollars (\$1,000,000) and an amount that, when added to all prior deposits into the Trust Account under this clause (2), equals the sum of fifty percent (50%) of any excess of the AC Budget above Twelve Million Dollars (\$12,000,000), but not more than Twenty Million Dollars (\$20,000,000), and one hundred percent (100%) of any excess of the AC Budget above Twenty Million Dollars (\$20,000,000) (the total amount described in clauses (1) and (2) of this sentence is referred to herein as the "Added Interim Tenant Deposit"; the First Interim Tenant Deposit and the Added Interim Tenant Deposit are herein collectively referred to as the "Interim Tenant Deposit").

Provided that no Default shall then exist and remain uncured and that Tenant has made the Interim Tenant Deposit to the extent then required under this Section 12.1(a) and subject to the provisions of Section 12.1(b), Landlord shall, within ten (10) days after each date on which each portion of the Added Interim

Tenant Deposit shall have been made, deposit into the Trust Account an amount equal to each such portion of the Added Interim Tenant Deposit which Tenant has deposited into the Trust Account (the sum of the deposits required to be made by Landlord under this sentence is referred to herein as the "Added Interim Landlord Deposit"; the First Interim Landlord Deposit and the Added Interim Landlord Deposit are herein collectively referred to as the "Interim Landlord Deposit").

Provided Landlord has made the Interim Landlord Deposit and subject to the provisions of Section 12.1(b), Tenant shall make three (3) additional deposits of One Million Dollars (\$1,000,000) each into the Trust Account, the first of such deposits to be made on November 1, 1995, the second of such deposits to be made on May 1, 1996, and the last of such deposits to be made on November 1, 1996 (each of such deposits, a "Deferred Tenant Deposit").

(b) If on or before the Construction Commencement Date, the AC Budget is less than Twelve Million Dollars (\$12,000,000), then (x) the Interim Landlord Deposit shall be reduced to an amount which, together with the Initial Landlord Deposit, will equal the greater of Four Million Dollars (\$4,000,000) and fifty percent (50%) of the AC Budget and (y) the amount of the Deferred Tenant Deposits required to be made in 1996 shall be reduced so that the sum of the Initial Tenant Deposit, the Interim Tenant Deposit and the Deferred Tenant Deposits shall equal but not exceed the greater of Four Million Dollars (\$4,000,000) and fifty percent

(50%) of the AC Budget. Notwithstanding any provision to the contrary in this Lease, in no event (i) shall Landlord be required to deposit funds into the Trust Account in excess of Ten Million Dollars (\$10,000,000) in the aggregate, or (ii) shall the sum of deposits made by Landlord into the Trust Account at any time exceed fifty percent (50%) of the AC Budget (the lesser of said Ten Million Dollars (\$10,000,000) and the sum of the amount, if any, required to be deposited by Landlord under the first sentence of Section 12.2(c), plus fifty percent (50%) of the AC Budget, as such lesser amount may be reduced as provided below in this Section 12.1(b), is referred to herein as the "Maximum Construction Payment"). For purposes of this Lease, the Maximum Construction Payment shall be automatically reduced as of the End Date to an amount equal to the lesser of (xx) the aggregate amount of deposits into the Trust Account then made by Landlord, (yy) fifty percent (50%) of the amounts expended from the Trust Account for Allowable Costs under Approved Contracts, and (zz) the amount deposited by Tenant into the Trust Account.

(c) Provided that no Default exists and remains uncured, Tenant may at any time and from time to time but only before the End Date and subject at all times to Landlord's approval, which approval shall not be withheld unreasonably, change the AC Budget for the purpose of including therein the costs of any Capital Improvement, including any improvement of, expansion or addition to, or other change in any Building then on the Land, subject to and in accordance with this Lease. After any change in the AC

Budget pursuant to the preceding sentence, whether before or after the Completion of the Building or the completion of any Capital Improvement, as referred to in Section 16.3, Landlord and Tenant shall each make further deposits into the Trust Account in accordance with the AC Budget as so changed, subject, however, to the provisions of the second sentence of Section 12.1(b) and to the provisions of Sections 12.2(c) and 12.3, and provided that deposits into the Trust Account shall be governed by the provisions of Section 12.1(a) if applicable or if such provisions are not applicable, either after Completion of the Building or otherwise, then Landlord's deposits into the Trust Account shall be made in amounts equal to, and within ten (10) days after, each deposit by Tenant into the Trust Account.

Section 12.2 (a) Subject to Section 12.2(b), funds being held in the Trust Account and not used to pay Allowable Costs under Approved Contracts shall remain in the Trust Account until the fifteenth (15th) anniversary of the date of execution of this Lease or the sooner termination of this Lease.

(b) Within two hundred fifty (250) days after the Completion of the Building, and within two hundred fifty (250) days after the completion of each Capital Improvement, as referred to in Section 16.3, or upon the sooner of the End Date or the termination of this Lease, any funds remaining in the Trust Account shall be withdrawn and disbursed by the Trustee as follows, after written instructions to such effect given by Landlord and Tenant to Trustee: Landlord shall receive the

lesser of the funds withdrawn and an amount, if any, equal to the sum of all deposits into the Trust Account theretofore made by Landlord in excess of the sum of all deposits into the Trust Account theretofore made by Tenant; Tenant shall receive the lesser of the funds withdrawn and an amount, if any, equal to the sum of all deposits into the Trust Account theretofore made by Tenant in excess of the sum of all deposits into the Trust Account theretofore made by Landlord; and from the balance, if any, of the then remaining funds withdrawn, Landlord shall receive fifty percent (50%) thereof and Tenant shall receive fifty percent (50%) thereof.

(c) If, after the Construction Commencement Date but prior to the End Date, the actual Allowable Costs incurred or estimates thereof exceed the AC Budget (the sum of any such excess is referred to herein as the "Excess Amount") then Landlord and Tenant shall each immediately deposit into the Trust Account fifty percent (50%) of the Excess Amount, provided that in no event shall Landlord be required to deposit more than Ten Million Dollars (\$10,000,000), and provided further that Tenant shall deposit into the Trust Account any portion of the Excess Amount not required to be deposited by Landlord under this sentence. All costs of completing construction of the Building after Landlord has deposited into the Trust Account the Maximum Construction Payment shall be borne solely by Tenant.

Section 12.3 Funds in the Trust Account shall be advanced by Trustee to Tenant, subject to all other provisions of this

Lease, within five (5) days after written notice given by Landlord and Tenant to Trustee. All such funds so advanced to Tenant shall be used to pay Allowable Costs under Approved Contracts. In no event shall any portion of the funds in the Trust Account be made available to Tenant (i) for Allowable Costs after any termination of this Lease for any reason, or (ii) during any period when Tenant is in Default under this Lease and such Default remains uncured. In no event shall Landlord have any obligation to make any further deposits into the Trust Account under any provision of this Lease after the termination of this Lease for any reason.

Section 12.4 The Trust Account advances and Tenant's obligation to pay Rental to Landlord are separate and distinct. Tenant shall have no obligation to repay Landlord for any amounts deposited by Landlord into the Trust Account and used to pay Allowable Costs under Approved Contracts.

Section 12.5 Subject to the terms and provisions of this Article 12, Landlord shall give notice to the Trustee directing the Trustee to advance funds out of the Trust Account only when the following shall have been complied with:

(a) At such time as Tenant shall desire to obtain, subject to the other requirements of this Article 12, an advance of any portion of the Trust Account, Tenant shall complete and deliver to Landlord for approval, in form and content reasonably satisfactory to Landlord, a "Draw Request" executed by Tenant and setting forth the amount for which Tenant is requesting an

advance from the Trust Account and the date such advance is desired. Each such Draw Request shall be delivered to Landlord for approval not less than twenty (20) Business Days prior to the date upon which an advance is requested; provided, however, Landlord shall not be obligated to approve any advance within said twenty (20) day period if Tenant shall fail to comply with the terms and provisions of this Article 12. Tenant shall only submit Draw Requests for Allowable Costs under Approved Contracts. Upon approval by Landlord, Landlord and Tenant shall, by notice given to Trustee, direct Trustee to advance funds from the Trust Account in accordance with such Draw Request. Advances from the Trust Account shall not be made more frequently than once every thirty (30) days.

(b) Each Draw Request shall be accompanied by the following items, each of which shall be in form and content reasonably satisfactory to Landlord:

(i) a sworn statement of Tenant setting forth a description of all contracts let by Tenant for the design, engineering and construction of the Building, including Approved Contracts, together with the aggregate amounts payable under said contracts and a listing of all change orders and of those amounts paid under said contracts and change orders thus far, which statement shall cover all work, services and materials relating to the advance then being requested;

(ii) a breakdown in reasonable detail of Allowable Costs, including "hard costs" and Design Fees relating to the advance then being requested;

(iii) a certificate signed by the Architect, or other qualified professional or expert reasonably satisfactory to Landlord, preceded by an on-site inspection of the Premises made not more than five (5) days prior to the date of such request for advance, in which the Architect, or such other professional or expert, shall (x) certify that any work and materials relating to the advance being requested shall have been completed, installed, or delivered, as the case may be, in accordance with the Construction Documents, and (y) state its estimate of (aa) the percentage of construction of the Building completed as of the date of such inspection on the basis of work completed and materials installed or delivered, (bb) "hard costs" and Design Fees actually incurred for work completed and materials installed or delivered as of the date of such inspection, and (cc) the actual sum necessary to complete construction of the Building in accordance with the Construction Documents as of the date of such inspection;

(iv) lien waivers covering all work and materials relating to the advance then being requested;

(v) a certificate from a title insurance company acceptable to Landlord (the "Title Insurer") showing the leasehold interest created by this Lease to be vested in

Tenant subject only to the Title Matters and the Light and Air Easement, including any liens and other title exceptions created by or otherwise the responsibility of Landlord and showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any part thereof, or any public improvement lien with respect to the Premises or the construction of the Building affecting Landlord, or the assets of, or funds appropriated to, Landlord, which has not been discharged of record (by bonding or otherwise); and

(vi) such other information and/or documentation as may reasonably be requested or required by Landlord, including without limitation, such bills, receipts, invoices and other evidence as may be required by Landlord to substantiate the actual costs incurred for the work, services and materials for which the advance is being requested, and any other items required by the Title Insurer.

(c) In no event shall Trustee make any advance of funds out of the Trust Account (and Landlord shall not direct Trustee to do so):

(i) if Tenant has not provided to Landlord within twenty (20) days after request by Landlord, current estimates of the amount of Allowable Costs needed to complete construction of the Building in accordance with Article 14;

(ii) if Landlord, utilizing estimates and information provided by Tenant and the certificate(s) provided pursuant to Section 12.5(b)(iii), shall be of the reasonable opinion that Tenant has materially deviated from the Construction Documents, and/or the remaining undisbursed portion of the Trust Account, together with the remainder of those funds available and reasonably expected to be available to Tenant to pay the costs of construction of the Building, are insufficient to achieve Completion of the Building in accordance with the Construction Documents;

(iii) if this Lease shall have terminated (except as otherwise provided in Section 12.2) or if a Default shall have occurred and remain uncured, provided that if Tenant cures said Default then the foregoing basis for cessation of advances from the Trust Account as a result of said Default shall thereafter no longer apply;

(iv) if construction of the Building shall cease or shall be abandoned and not resumed within sixty (60) Business Days, provided, however, said sixty (60) day period shall be extended one (1) day for each day construction has ceased by reason of any Unavoidable Delay;

(v) if advances from the Trust Account, or any part thereof, are being or shall have been diverted to a purpose other than the purposes permitted under this Lease or for which such advances were requested by Tenant; or

(vi) if any litigation or proceeding shall be pending or threatened which Landlord reasonably concludes is likely to have a materially adverse effect on Tenant's ability to perform its obligations under this Lease.

(d) If Tenant shall have failed to fulfill (or comply with) any of the covenants, conditions or agreements contained in Section 12.5(c), or if any other conditions set forth in this Lease have not been met, Landlord shall be permitted to cause Trustee to cease making advances from the Trust Account, and Tenant shall have no recourse or cause of action against Landlord as a result thereof. Landlord shall not be obligated to direct Trustee to commence or continue such disbursements until such time as, in Landlord's opinion, Tenant has fulfilled (or is in compliance with) all of the terms and provisions of this Article 12, and all of said conditions have been met.

(e) The phrase "work and materials relating to the advance being requested", or any variation thereof or phrase similar thereto, when used in this Article 12, is intended to and shall mean and refer to not only the work, services and materials for which Tenant shall receive advances from the Trust Account, but also any work, services or materials for which Tenant may be required to pay at the time of such advances, whether or not such work, services or materials shall be provided under an Approved Contract. For example, if Tenant is obligated to pay one thousand dollars (\$1,000) toward Design Fees and Tenant shall (subject to the terms of this Article 12) be entitled to an

advance of only five hundred dollars (\$500) from the Trust Account, the remaining five hundred dollars (\$500) relates to the services required to be paid for by Tenant, without payment therefor from the Trust Account, and corresponds to the five hundred dollars (\$500) advance from the Trust Account. The foregoing is intended to apply especially, but not exclusively, to those provisions of this Article 12 dealing with certificates, lien waivers and title matters (i.e., so that Tenant understands that all certificates, lien waivers, title certifications and other such documentation under this Article 12 shall be required to cover all work, services and materials and not just the portion thereof for which Tenant requests an advance from the Trust Account).

Section 12.6 Landlord shall be entitled at its election after reasonable notice to Tenant, and at Landlord's cost and expense (a) to designate or appoint an independent architect and/or engineer, in place of the Architect or any other professional or expert otherwise acting under Section 12.5(b)(iii), to make on-site inspections of the Building and to provide certificates as described in and for the purposes of Section 12.5. Landlord shall not unreasonably exercise its rights as provided in this Section 12.6.

Section 12.7 Notwithstanding any other provision of this Article 12, no advance from the Trust Account or any other actions of Landlord or of any other Person under this Lease shall be deemed an approval or acceptance by Landlord of any work or

services performed or any materials furnished with respect to the Building, or a representation by Landlord as to the fitness or proper completion or installation of any such work, services or materials.

ARTICLE 13

SITE 14 PAYMENT

Section 13.1 Landlord shall, at such times as it deems appropriate in its sole and absolute discretion, seek to interest a developer or developers in undertaking, pursuant to a lease or leases from Landlord, development of all or part of the portion of the land known as Site 14 at Battery Park City that is designated by Landlord for residential development and is not leased to Tenant pursuant to this Lease (such portion of Site 14 is herein referred to as the "Balance of Site 14"), without cost or expense to Landlord and in accordance with the Master Development Plan, the applicable Design Guidelines and other requirements generally applicable to development at Battery Park City (each lease for any such development of the Balance of Site 14 or a portion thereof is hereinafter referred to as a "Development Agreement"). Landlord shall cause each Development Agreement which Landlord executes to include: (i) a requirement that the lessee thereunder (a "Site 14 Developer") shall pay to Tenant on behalf of the Commission the Site 14 Payment, hereinafter defined, or the portion of the Site 14 Payment allocable to the Site 14 Developer under its Development Agreement, as determined and to be paid in accordance with the provisions of this Lease; and (ii) requirements that, at Tenant's option and cost, as further provided for in the following sentence, any improvements of a Site 14 Developer on the Balance of Site 14 shall be designed and constructed by said Site 14

Developer, subject to design approval by Landlord, in such a manner, and with such grants of easements by said Site 14 Developer to Tenant across the Balance of Site 14 and in portions of said improvements, as shall permit up to twenty thousand (20,000) square feet on the lower five (5) floors of said improvements to be used by Tenant for Museum Uses in an expansion of the Building into said improvements. Tenant's option referred to in clause (ii) of this Section 13.1 shall be provided for in or shall otherwise be binding under the Development Agreement applicable to the improvements constructed on the Balance of Site 14, and Tenant's cost referred to in said clause (ii) shall not exceed the cost to said Site 14 Developer of complying with such requirements, as provided for in said Development Agreement. In no event, however, shall a Development Agreement be executed by Landlord pursuant to the preceding two sentences if amounts due to Landlord thereunder by the Site 14 Developer would not at least equal all amounts required to be received by Landlord pursuant to the provisions of the Master Lease for payments in lieu of taxes, civic facility payments and net annual basic rent.

Section 13.2

(a) The Site 14 Payment and Tenant's obligation to pay Rental to Landlord are separate and distinct. This Lease shall not constitute a guarantee by Landlord of the receipt by Tenant or the Commission of the Site 14 Payment, and no agreement by Landlord hereunder or under any document entered into in connection with this Lease shall constitute a pledge, mortgage,

sale or other encumbrance or alienation of the Landlord's interest in Battery Park City, or any portion thereof. Tenant's obligations under this Lease shall in no event be excused or otherwise affected based on any payment or nonpayment to Tenant for any reason of all or any part of the Site 14 Payment.

No portion of the Site 14 Payment shall be permitted or required to be paid to Tenant under any Development Agreement after this Lease shall have terminated or during any time when Tenant shall be in Default under this Lease and such Default remains uncured, with notice of such Default having been furnished by Landlord to the Site 14 Developer under such Development Agreement, provided that at such time as Tenant has cured any such Default, the basis under this sentence for the suspension of payment to Tenant of the Site 14 Payment as a result of said Default shall not apply and any such suspended payments shall then immediately be made by the Site 14 Developer to Tenant.

In the event any Site 14 Developer defaults in its obligation to pay any portion of the Site 14 Payment, or otherwise defaults under its Development Agreement, and Landlord, in its sole and absolute discretion, replaces said Site 14 Developer with a successor Site 14 Developer, Landlord shall cause any Development Agreement which Landlord executes with such successor Site 14 Developer to include a (x) requirement that the successor Site 14 Developer shall pay to Tenant on behalf of the Commission the portion of the Site 14 Payment, which was not paid

by the defaulting Site 14 Developer, and (y) requirements described in clause (ii) of Section 13.1 to the extent applicable to improvements of the successor Site 14 Developer on the Balance of Site 14 and comparable to any such requirements binding on the defaulting Site 14 Developer, it being understood that all such payments and requirements shall, in any and all events, be subject to the other terms and provisions of this Article 13.

(b) Landlord shall, in its sole and absolute discretion, make all decisions with respect to the timing of all development on the Balance of Site 14 and the selection of any Site 14 Developer. If within fifteen (15) years after the Commencement Date Landlord has not entered into a binding agreement or agreements for development of all portions of the Balance of Site 14, Landlord, at its option, notice of the exercise of which having been given by Landlord to Tenant, may thereafter cause the Site 14 Appraiser, as hereinafter defined, to appraise the then fair market value of the Commission's interest in the Residential Lease and if such binding agreement or agreements shall have been entered into for any part but not all of the Balance of Site 14, to determine, in addition, the appropriate proportionate part of the then fair market value of such interest, such appraisal and any such determination to be made in accordance with Section 13.4. Subject to applicable law, Landlord, at its further option, may elect to pay to Tenant on behalf of the Commission an amount equal to such fair market value, or proportionate part thereof, as so determined less the amount of

the Maximum Construction Payment as of the End Date or, to the extent appropriate, a proportionate part of the Maximum Construction Payment as of the End Date. Upon receipt of such payment by Tenant, all rights of Tenant on behalf of the Commission or otherwise with respect to receipt of the Site 14 Payment shall terminate.

Section 13.3

(a) The Site 14 Payment shall in the aggregate equal (i) the greater of (x) seventeen million five hundred thousand dollars (\$17,500,000), or (y) the fair market value of the Commission's interest in the Residential Lease as determined by appraisal pursuant to Section 13.4, less (ii) the amount of the Maximum Construction Payment as of the End Date. If the Development Agreement first executed by Landlord for any portion of the Balance of Site 14 provides for the lease and development of less than all of the Balance of Site 14, Landlord shall, at the time of the execution of such Development Agreement, allocate appropriate shares of the Site 14 Payment to the portion of the Balance of Site 14 to which such first Development Agreement applies and to all other portions of the Balance of Site 14, and Landlord may thereafter make changes in such allocations from time to time as any additional Development Agreements shall be executed by Landlord, with all such allocations to be made in a manner determined by Landlord in its reasonable discretion; provided that the total of all such allocable shares shall equal the amount of the Site 14 Payment (each such allocable share is

referred to herein as an "Allocable Share". Each Site 14 Developer shall be required to pay under its Development Agreement the Allocable Share applicable to such Development Agreement.

(b) Neither Tenant nor the Commission shall have any rights as a third-party beneficiary or otherwise to enforce any provisions of any Development Agreement, including without limitation, any provisions regarding the Site 14 Payment. Each Development Agreement shall be permitted to provide that the Site 14 Developer thereunder shall pay the Site 14 Payment or its Allocable Share to Tenant at any time after execution by Landlord of the Development Agreement or in installments after such execution, as Landlord shall determine in its sole and absolute discretion in order to best facilitate the development of the Balance of Site 14, but in all events within no more than ninety (90) months after execution by Landlord of said Development Agreement. Without in any way limiting the meaning or application of the foregoing provisions of this paragraph (b) or any other provisions of this Article 13, Landlord shall seek in good faith, but shall have no obligation, to require under each Development Agreement reasonable security or other assurances from the Site 14 Developer thereunder for the payment to Tenant by said Site 14 Developer of the Site 14 Payment or its Allocable Share, provided that Landlord shall not be permitted to require in a Development Agreement that the Site 14 Developer thereunder pay Landlord during any annual period under such Development

Agreement, any ground rent or other rent, other than payments in lieu of taxes or amounts constituting civic facility payments, until either Tenant has received a total of no less than seven million five hundred thousand dollars (\$7,500,000) from all Site 14 Developers for the Site 14 Payment, or said Site 14 Developer has paid to Tenant the portion of the Site 14 Payment payable by said Site 14 Developer with respect to such annual period, without including in such portion of the Site 14 Payment any amount payable with respect to or attributable to any period before or after such annual period. The preceding sentence shall in no way be construed or applied to limit the discretion of Landlord with respect to the timing of development of the Balance of Site 14, the selection of any Site 14 Developer, or the timing of execution of any Development Agreement.

Section 13.4

(a) The Site 14 Appraiser, hereinafter defined, shall conduct such appraisal or appraisals as may be provided for under this Lease to determine the fair market value of the Commission's interest in the Residential Lease and/or to determine a proportionate part of the fair market value of such interest if Landlord executes any Development Agreement or Agreements for any part but not all of the Balance of Site 14. An appraisal of the fair market value of the Commission's interest in the Residential Lease shall be conducted in connection with and a reasonable time before Landlord's execution of the first Development Agreement for any portion of the Balance of Site 14. If Landlord has given

notice of the exercise of its option described in Section 13.2(b), an appraisal of the then fair market value of the Commission's interest in the Residential Lease or of a proportionate part of the then fair market value of such interest, as the case may be, shall be conducted in connection with and a reasonable time after Landlord has given notice of its exercise of such option.

(b) The Site 14 Appraiser shall be selected by Tenant from a list of six (6) real estate appraisers submitted by Landlord to Tenant or if Tenant fails to make such selection within thirty (30) days after Landlord's submission to Tenant of such list, such selection may be made by Landlord. Landlord shall submit such list to Tenant at least forty-five (45) days before Landlord executes the first Development Agreement for any portion of the Balance of Site 14 and within thirty (30) days after Landlord has given notice of the exercise of its option described in Section 13.2(b). Landlord shall compensate the Site 14 Appraiser for any appraisal under this Section 13.4. Landlord shall cause the Site 14 Appraiser to appraise the then fair market value of the Commission's interest in the Residential Lease, and/or any proportionate part of such fair market value, as the case may be, as if the Commission had not previously surrendered such interest and taking into account any expansion of the Building, and provisions therefor, as provided in Section 13.1. The amount of the then fair market value determined by such appraisal shall in all events be net of the present value, at the time of the

appraisal, of the Base Rent, or proportionate part thereof, payable by the Commission to Landlord pursuant to Article 3 of the Residential Lease.

Section 13.5 Each Development Agreement shall provide that payment of any portion of the Site 14 Payment shall be subject to the following conditions:

(a) Tenant shall not assign its right to receive the Site 14 Payment under any circumstances, except that such assignment shall be permitted with Landlord's consent for the purpose of assisting Tenant and the Commission in obtaining a binding loan agreement to finance the construction of the Building.

(b) Tenant shall apply the Site 14 Payment solely to the cost of the construction and operation of the Building and the conduct of the Museum Uses. The Site 14 Payment, or any portion thereof, received by Tenant prior to the fifteenth (15th) anniversary of the date of execution of this Lease shall be deposited by Tenant into the Trust Account (to the extent of any shortfall in the obligations of Tenant described in clause (i) below or to the extent that Tenant has not made any of the deposits described in clause (ii) below) to be advanced in accordance with this Lease, if, either (i) the funds in the Trust Account are not sufficient for Tenant to meet its obligations under the Construction Agreements or any other obligations in connection with the construction of the Building or any Capital Improvement or (ii) Tenant shall not have theretofore deposited

into the Trust Account any of the ~~Deferred Tenant Deposits~~ or any other amounts then required to be deposited pursuant to Section 12.1 or Section 12.2.

(c) Subject to the provisions of Section 13.5(b), Tenant shall be permitted to apply the portion of the Site 14 Payment payable during any annual period, or any previous period that remains unpaid, by a Site 14 Developer under a Development Agreement in satisfaction of an obligation of Tenant due to the same Site 14 Developer during said annual period with respect to space in improvements constructed by said Site 14 Developer to be used by Tenant for Museum Uses as contemplated under clause (ii) of the second sentence of Section 13.1.

ARTICLE 14
CONSTRUCTION OF BUILDING

Section 14.1

(a) Tenant shall promptly satisfy the requirements of this Lease in order to commence and diligently complete (subject to Unavoidable Delays) construction of the Building. Tenant shall thereafter, using a reputable and responsible contractor or construction manager approved by Landlord, which approval shall not be unreasonably withheld, promptly commence (subject to Unavoidable Delays), on or before the Construction Commencement Date, and (subject to Unavoidable Delays) diligently proceed with, construction of the Building in accordance with the Requirements, Master Development Plan, the Design Guidelines, the Construction Documents, and the applicable provisions of this Lease. Tenant shall as soon as practicable obtain from New York City and all other Governmental Authorities all permits, consents, certificates and approvals required for construction of the Building. At the request of Tenant, Landlord, at no cost or expense to it, shall within ten (10) days of Tenant's request, execute and deliver any documents or instruments reasonably required to obtain such permits, consents, certificates and approvals, provided such documents or instruments do not impose any liability or obligation on Landlord.

(aa) Tenant shall not undertake Commencement of Construction consisting of any excavation, foundation, driving of piles and other like below grade work (collectively, "Below Grade Work") on

the Land unless and until ~~Tenant has deposited the Initial Tenant~~
~~Deposit into the Trust Account~~ and the following conditions have
been satisfied: 12

(i) Tenant shall have obtained and delivered to Landlord copies of all necessary permits, consents, certificates and approvals for all such Below Grade Work from all Governmental Authorities which are required to have been obtained prior to commencement of any such Below Grade Work;

(ii) Tenant shall have delivered to Landlord executed copies of Tenant's contracts with respect to the Below Grade Work, including without limitation contracts with the Architect, the structural engineer and all Construction Agreements between Tenant and contractors and a construction manager covering the Below Grade Work, which Construction Agreements shall each contain provisions that each and every payment to any such contractor or materialman by Tenant before completion of fifty percent (50%) of the Below Grade Work shall not exceed ninety percent (90%) of the value of the work completed when payment is requested by said contractor or materialman; and

(iii) Tenant shall have delivered to Landlord the original policies of insurance or duplicate originals thereof, in accordance with Section 14.3(b).

(b) Tenant shall not undertake construction of the Building consisting of other than Below Grade Work unless and until Tenant

has deposited the First Interim Tenant Deposit into the Trust Account and the following conditions have been satisfied:

(i) Tenant shall have obtained as aforesaid and delivered to Landlord copies of all necessary permits, consents, certificates and approvals for such construction from all Governmental Authorities which are required to have been obtained prior to Commencement of Construction;

(ii) Landlord shall have reviewed the Construction Documents in the manner provided herein and shall have determined that they conform to the Master Development Plan, the Design Guidelines, and the Design Development Plans;

(iii) Tenant shall have delivered to Landlord executed copies of Tenant's contract with the Architect for design of the Building and related construction administration, and all Construction Agreements between Tenant and all contractors and materialmen, for construction of the Building, which Construction Agreements shall be assignable to Landlord and shall each contain provisions that each and every payment to any such contractor or materialman by Tenant before completion of fifty percent (50%) of the work and other obligations required to be performed by such contractor or materialman shall not exceed ninety percent (90%) of the value of the work completed when payment is requested by said contractor or materialman;

(iv) Tenant shall have delivered to Landlord the original policies of insurance or duplicate originals thereof, in accordance with Section 14.3(b); and

(v) Tenant shall have submitted to Landlord estimates and a budget of all Allowable Costs necessary for Completion of the Building and opening the Building to the public in accordance with the provisions of this Lease, which estimates shall be prepared by qualified cost estimators, accompanied by a written certification from Tenant's construction manager, in form and substance satisfactory to Landlord, to the effect that such budget includes amounts sufficient to pay all costs for Completion of the Building in accordance with the Construction Documents, and shall have also submitted to Landlord a budget of Excluded Costs that are required or expected to be incurred at any time in connection with Completion of the Building or opening the Building to the public, all of which estimates and budgets shall have been approved by Landlord.

(c) The budgets submitted by Tenant to Landlord as described in Section 14.1(b)(v) shall not be approved by Landlord unless:

(i) the budget of Allowable Costs shall include, in addition to estimates of all Allowable Costs needed to complete construction of the Building and open the Building to the public in accordance with the provisions of this Lease, an allowance for design, architectural and

construction contingencies equal to twenty percent (20%), or such lower percentage as Landlord may approve, of the estimated costs included in such budget for hard costs, Design Fees and usual museum fit-up, as described in clauses (i), (ii) and (iv) of the definition of Allowable Costs, it being agreed by Landlord, however, that such allowance for contingencies included in such budget may be reduced from twenty percent (20%) to five percent (5%) of such estimated costs if a construction firm or firms acceptable to Landlord provides to Tenant, before the start of any on or above grade construction work on the Land, a guaranteed overall fixed price or a guaranteed overall maximum price to construct all portions of the Building, exterior and interior, in accordance with complete and coordinated Construction Documents for the entire Building, including interior finishes, installations, furnishings and furniture, and such guaranteed overall fixed price or guaranteed overall maximum price is included in full in Allowable Costs, and if all other conditions and requirements for Commencement of Construction by Tenant under this Lease have been complied with; and

(ii) the total amount of the budget of Allowable Costs submitted to Landlord, including the allowance for contingencies pursuant to the preceding clause (i), shall not exceed the sum of (x) cash and the investments equivalent to cash available to Tenant for the timely

payment of Allowable Costs, and (y) the commitments of governmental entities for funding (other than the Maximum Construction Payment (or any portion thereof) and the Site 14 Payment) and the enforceable commitments of non-government contributors under written pledges, which commitments are satisfactory to Landlord to assure the availability of the amounts committed for the timely payment of Allowable Costs, and (z) the Maximum Construction Payment; and

(iii) the budget of Excluded Costs shall not exceed the sum of the cash and the investments equivalent to cash available to Tenant, and the commitments to Tenant or the Commission under enforceable pledges or guarantees (other than the Site 14 Payment), for the timely payment of Excluded Costs.

(d) Tenant shall obtain such other permits, consents, certificates and approvals as may be required from time to time to continue and complete the construction of the Building. Within ten (10) days after request by Landlord, Tenant shall execute and deliver to Landlord an assignment to Landlord of each Construction Agreement executed by Tenant as contemplated under this Article 14, and the bonds or other security provided under each such Construction Agreement, such assignment to be duly executed and acknowledged by Tenant and by its terms to be effective only upon any termination of this Lease or upon Landlord's re-entry upon the Premises or following any Event of

Default prior to the complete performance of such Construction Agreement, such assignment also to include the benefit of all payments made on account of such Construction Agreement, including payments made prior to the effective date of such assignment. Tenant shall deliver to Landlord within fifteen (15) Business Days after Commencement of Construction its certification setting forth the date of Commencement of Construction. In the event Landlord shall not have objected to such date within fifteen (15) Business Days after Tenant shall have submitted its certification to Landlord, such date shall be deemed to be the date of Commencement of Construction. In the event Landlord shall have delivered its objection within such fifteen (15) Business Day period and the parties shall be unable to agree on such date, such dispute shall be resolved by arbitration pursuant to Article 39.

(e) The foregoing provisions of this Section 14.1 shall not extend any time limit concerning construction of the Building otherwise applicable under this Lease and no Default or Event of Default, based on or resulting from Tenant's failure or inability to comply with any such time limit due in whole or in part to the provisions of this Section 14.1, shall be excused or otherwise affected.

Section 14.2

(a) Tenant has submitted to Landlord and Landlord has approved pre-schematic drawings for the Building prepared by the Architect and in accordance with Landlord's submission

requirements for pre-schematics. Exhibit E hereto lists by title and date the pre-schematic drawings referred to in the previous sentence (the "Pre-Schematics").

(b) Tenant shall as soon as reasonably practicable after the date hereof submit to Landlord for its review scaled schematic drawings (the "Schematics") prepared by the Architect and in accordance with Landlord's submission requirements for schematics, such requirements being more particularly described in the Design Guidelines. Any changes in the Schematics from the Pre-Schematics shall be identified in reasonable detail. If Landlord determines that the Schematics conform to the Master Development Plan, the Design Guidelines and the Pre-Schematics, Landlord shall notify Tenant to that effect. If Landlord determines that the Schematics do not so conform to the Master Development Plan, the Design Guidelines and the Pre-Schematics, Landlord shall so notify Tenant, specifying those respects in which the Schematics do not so conform, and Tenant shall revise the Schematics to so conform and shall resubmit the same to Landlord for review. Each review by Landlord shall be carried out within fifteen (15) Business Days after the date of submission of the Schematics or revised Schematics, as the case may be, by Tenant (and if Landlord shall not have notified Tenant of its determination within such fifteen (15) Business Day period, it shall be deemed to have determined that the Schematics do conform to the Master Development Plan, the Design Guidelines and the Pre-Schematics).

(c) As soon as practicable after Landlord shall have notified Tenant that the Schematics conform to the Master Development Plan, the Design Guidelines and the Pre-Schematics, Tenant shall submit to Landlord for its review, design development plans and outline specifications for the Building (the "Design Development Plans"), prepared by the Architect and in accordance with Landlord's submission requirements for design development, such requirements being more particularly described in the Design Guidelines. Any changes in the Design Development Plans from the Schematics shall be identified in reasonable detail. If Landlord determines that the Design Development Plans conform to the Master Development Plan, the Design Guidelines and the Schematics, Landlord shall notify Tenant to that effect. If Landlord determines that the Design Development Plans do not conform to the Master Development Plan, the Design Guidelines and the Schematics, Landlord shall so notify Tenant, specifying those respects in which the Design Development Plans do not so conform, and Tenant shall revise the same to so conform and shall resubmit the Design Development Plans to Landlord for review. Each review by Landlord shall be carried out within fifteen (15) Business Days after the date of submission of the Design Development Plans or revised Design Development Plans, as the case may be, by Tenant (and if Landlord shall not have notified Tenant of its determination within such fifteen (15) Business Day period, it shall be deemed to have determined that the Design Development

Plans do conform to the Master Development Plan, the Design Guidelines and the Schematics).

(d) As soon as practicable after Landlord shall have notified Tenant that the Design Development Plans conform to the Master Development Plan, the Design Guidelines and the Schematics, Tenant shall submit to Landlord final contract plans and specifications for the Building prepared by the Architect and in accordance with Landlord's requirements for final contract plans and specifications, such requirements being more particularly described in the Design Guidelines. Any changes in such final contract plans and specifications from the Design Development Plans shall be identified in reasonable detail. The final contract plans and specifications shall be reviewed by Landlord to determine whether or not they conform to the Master Development Plan, the Design Guidelines and the Design Development Plans. If Landlord determines that they do so conform, Landlord shall notify Tenant to that effect. If Landlord determines that the final contract plans and specifications do not conform to the Master Development Plan, the Design Guidelines and the Design Development Plans, Landlord shall so notify Tenant, specifying those respects in which the final contract plans and specifications do not so conform, and Tenant shall revise the same to so conform and shall resubmit the final contract plans and specifications to Landlord for review. Each review by Landlord shall be carried out within fifteen (15) Business Days after the date of submission of the final contract

plans and specifications or revised final contract plans and specifications, as the case may be, by Tenant (and if Landlord shall not have notified Tenant of its determination within such fifteen (15) Business Day period, it shall be deemed to have determined that the final contract plans and specifications do conform to the Master Development Plan, the Design Guidelines and the Design Development Plans). The final contract plans and specifications that have been determined to conform to the Master Development Plan, the Design Guidelines and the Design Development Plans, as the same may be changed from time to time by Tenant, to the extent such changes are approved by Landlord as hereinafter provided, are hereinafter referred to as the "Construction Documents."

(e) In the event that Tenant shall desire to modify the Construction Documents with respect to, or in any other way so as to affect, any aspect of the exterior of the Building or the height, bulk or setback of the Building, or the compliance of the Building with the Master Development Plan or the Design Guidelines, or the interior of the Building regarding the size, types of possible use, or character of the Public Areas, Tenant shall submit the proposed modifications to Landlord for approval prior to making or implementing any such modification. All such modifications shall be identified in reasonable detail. Tenant shall not be required to submit to Landlord proposed modifications of the Construction Documents which otherwise affect solely the interior of the Building. Landlord shall

review the proposed modifications to determine whether or not they (i) conform to the Master Development Plan, the Design Guidelines and this Lease, and (ii) provide for design, and with respect to the exterior of the Building, provide for finishes and materials, which are consistent with and comparable in quality to those provided for in the Construction Documents. If Landlord determines that they do so conform and provide, Landlord shall notify Tenant to that effect. If Landlord determines that the Construction Documents, as so modified, do not conform to the Master Development Plan, the Design Guidelines and the Lease or do not provide for such design, finishes and materials, Landlord shall so notify Tenant, specifying those respects in which they do not so conform or provide, and Tenant shall revise the same to meet Landlord's objections and shall resubmit them to Landlord for review. Each review by Landlord shall be carried out within fifteen (15) Business Days after the date of submission by Tenant of the Construction Documents, as so modified (and if Landlord shall not have notified Tenant of its determination within such fifteen (15) Business Day period, it shall be deemed to have determined that the proposed modifications are satisfactory).

(f) Notwithstanding the provisions of Section 14.2(e), if, after the Commencement of Construction, Tenant makes a good faith determination that any proposed modification which requires Landlord's approval under Section 14.2(e) is of a minor or insubstantial nature, Tenant may so advise an employee designated by Landlord ("Landlord's Project Manager") delivering to him or

her a written statement setting forth the proposed modification ~~and the basis for Tenant's determination and simultaneously~~ delivering copies of said statement to Landlord's President and Chief Executive Officer and Vice President for Planning and Design. Landlord's Project Manager shall, in writing, before the expiration of the fifth (5th) full Business Day after the receipt of said advice, either (i) notify Tenant of its approval of said proposed modification or (ii) notify Tenant that Tenant is required to submit the proposed modification to Landlord as provided in Section 14.2(e). In the event Landlord's Project Manager acts in accordance with clause (ii) of the preceding sentence, Landlord, after receipt from Tenant of the proposed modification, shall endeavor to expedite its review thereof and notification to Tenant of its determination. Nothing set forth in this Section 14.2(f) shall require Landlord to notify Tenant of Landlord's determination earlier than the expiration of the fifteen (15) Business Day period set forth in Section 14.2(e) with respect to such modification, provided, however, that if Landlord's Project Manager shall not have notified Tenant pursuant to either clause (i) or clause (ii) of the preceding sentence within the five (5) Business Day period set forth above, Landlord shall be deemed to have approved the proposed modification.

(g) The Construction Documents shall comply with the Requirements, including but not limited to the Building Code of New York City. The responsibility to assure such compliance

shall be Tenant's. Landlord's determination that the Construction Documents conform to the Master Development Plan, the Design Guidelines and any other standard shall not be, nor shall it be construed to be or relied upon as, a determination that the Construction Documents comply with the Requirements. In the event that there shall be a conflict between the Requirements and the Master Development Plan or the Design Guidelines, the Requirements shall prevail.

(h) In addition to the documents referred to in Section 14.1 and this Section 14.2, Tenant shall, at least forty-five (45) Business Days prior to ordering the same for incorporation into the Building, submit to Landlord samples of all materials to be used on the exterior of the Building, including, without limitation, windows and masonry, and the same shall be subject to Landlord's approval for conformity to the Design Guidelines, the Master Development Plan and the Construction Documents. If Landlord shall have failed to object to any of such materials within fifteen (15) Business Days after its receipt of such materials, it shall be deemed to have approved such materials. Landlord reserves the right to maintain at its cost its field personnel at the Premises to observe Tenant's construction methods and techniques and Landlord shall be entitled to have its field personnel or other designees attend Tenant's job and/or safety meetings. No such observation or attendance by Landlord's personnel or designees shall impose upon Landlord any responsibility for any failure by Tenant to observe

applicable Requirements or safety practices in connection with such construction, or constitute an acceptance of any work which does not comply in all respects with the Requirements and the provisions of this Lease.

(i) Notwithstanding anything herein contained to the contrary, Tenant represents and covenants that it will not seek to obtain any amendment of, variance under, or map or text change to, the Zoning Resolution with respect to the Premises.

(j) Tenant shall not construct or permit to exist any Building on the Land unless the Building complies with the Master Development Plan and the Design Guidelines.

(k) The Building shall be designed and constructed so that following Completion of the Building, and at all times during the Term, the Building shall include (i) an area to memorialize the victims of the Holocaust, (ii) a museum and exhibition area related or devoted to the Holocaust and consistent with the Museum Uses, and (iii) any other areas and facilities deemed necessary for exhibitions and other purposes consistent with the Museum Uses; provided, however, that at all times during the Term, at least seventy-five percent (75%) of the space in the Building shall consist of memorial, museum and exhibition space (referred to herein as the "Public Areas") designed and intended for use by members of the general public assembled in significant numbers at the same time in space without divisions or other barriers, as contrasted with separate individual use or use by small numbers of isolated individuals or small isolated groups.

(l) In addition to submitting the samples referred to in Section 14.2(h), Tenant shall, at least forty-five (45) Business Days prior to ordering the same, submit to Landlord drawings and specifications of any lettering, signs, decorations, showcases, displays, display windows, planters, illumination or sound devices to be used on the exterior of the Building or in any area adjacent to the Building and the same shall not be installed upon, or attached or affixed to, the exterior of or in the area adjacent to, the Building without the prior written approval of Landlord.

(m) Landlord acknowledges and agrees that in order to meet Tenant's construction schedule, Tenant may be required to "fast track" certain aspects of the final detailed plans and specifications and of the excavation and foundation stage of the construction process. Landlord agrees, within the limitations of sound construction practice, to cooperate with Tenant, as reasonably requested from time to time by Tenant, in "fast tracking" the construction of the Building. Such cooperation may include, and may only include (i) shortening the review periods provided for herein, (ii) reviewing certain aspects of the Design Development Plans and Construction Documents prior to completion and submission to Landlord of every aspect thereof, and (iii) permitting Tenant to begin foundation work prior to completion and approval by Landlord of the Construction Documents.

(n) Tenant covenants and agrees that in the construction of the Building, Tenant, and any employee, officer, agent or

representative of Tenant, shall not pay, lend or deliver, or agree to pay, lend or deliver, or request, demand, require, extort, receive or accept, or agree to request, demand, require, extort, receive or accept, any payment, loan, sum of money, property or other thing of value, including, without limitation, any bribe, kickback, other unlawful payment, loan, gratuity, fee or charge of any nature or kind whatsoever, in violation of this Lease, the Labor Management Relations Act of 1947, as amended, the Labor Management Reporting and Disclosure Act, as amended, and any and all other Requirements. In the event that Landlord, in its reasonable discretion, determines that Tenant has failed to comply with the provisions of this Section 14.2(n), then notwithstanding any other provision in this Lease to the contrary, and in addition to any and all other rights and remedies available to Landlord under this Lease, at law, in equity or otherwise, Landlord, in its sole and absolute discretion, shall have the right to demand that Tenant immediately take all necessary action to terminate the employee, officer, agent or representative who caused the violation of this Section 14.2(n).

Section 14.3

(a) Commencing on the Commencement Date, Tenant shall provide, or cause to be provided, and thereafter shall keep in full force and effect, or cause to be kept in full force and effect with respect to the Premises, until Commencement of Construction, insurance coverage of the types set forth in

Section 8.1(a)(ii) and 8.1(a)(vii) with a coverage limit of not less than five million dollars (\$5,000,000). Prior to the Commencement of Construction, Tenant shall provide, or cause to be provided, and thereafter shall keep or cause to be kept in full force and effect, or cause to be kept in full force and effect with respect to the Premises, until Completion of the Building, the following:

(i) commercial general liability insurance, naming contractor or construction manager as named insured and, as additional insureds, Tenant, Landlord and Master Landlord, such insurance to insure against liability for bodily injury and death and for property damage in such amount as may from time to time be reasonably required by Landlord (which shall be not less than twenty million dollars (\$20,000,000) combined single limit nor more than such amount as, at the time in question, is customarily carried by prudent owners with like buildings and improvements under construction in like locations), such insurance to include operations-premises liability, contractor's protective liability on the operations of all subcontractors, completed operations (to be kept in force for not less than three (3) years after Substantial Completion of the Building), broad form contractual liability (designating the indemnity provisions of the Construction Agreements and this Lease, but with regard to the indemnity provisions of this Lease, limited to claims, accidents, injuries and damages arising

from or attributable to negligence or any other risk covered by such general liability insurance), broad form property damage, all coverage formerly provided under the broad form comprehensive general liability endorsement and, if the contractor is undertaking foundation, excavation or demolition work, an endorsement that such operations are covered and that the "XCU Exclusions" have been deleted;

(ii) automobile liability insurance for all owned, non-owned, leased, rented and/or hired vehicles insuring against liability for bodily injury and death and for property damage in an amount not less than five million dollars (\$5,000,000) combined single limit, such insurance to name Tenant (contractor if carried by contractor) as named insured and, as additional insureds, Landlord, Master Landlord and any general contractor or construction manager engaged by Tenant (Tenant if contractor carries such insurance);

(iii) workers' compensation, New York State disability and other statutory New York State insurance for all persons employed in connection with the construction at the Premises including, as a minimum, Employer's Liability limits of one hundred thousand/one hundred thousand/five hundred thousand (\$100,000/\$100,000/\$500,000), with coverage to be listed in the underlying schedule of any umbrella or following form excess policy;

(iv) all-risk builder's risk insurance written on a one hundred percent (100%) of completed value (non-reporting) basis with limits as provided in Section 8.1(a)(i), naming, to the extent of their respective insurable interests in the Premises, Tenant as named insured, and, as additional insureds, Landlord, Master Landlord and any contractor or construction manager engaged by Tenant. In addition, such insurance (A) shall contain an acknowledgment by the insurance company that its rights of subrogation have been waived with respect to all of the insureds named in the policy and an endorsement stating that "permission is granted to complete and occupy," (B) if any storage location situated off the Premises is used, shall include coverage for the full insurable value of all materials and equipment on or about any such storage location intended for use with respect to the Premises, and (C) if materials, equipment, machinery or supplies to be used in connection with construction are shipped to the job site from places in the contiguous United States, the District of Columbia or Canada, the all-risk builders risk insurance will provide transit coverage; and

(v) professional liability/errors and omissions insurance covering the work of the Architect on the Building with a limit of no less than two million dollars (\$2,000,000).

In the event the proceeds received pursuant to the insurance coverage required under Section 14.3(a)(iv) shall exceed three hundred and fifty thousand dollars (\$350,000) (as such amount shall be increased as provided in Section 8.2(a)), such proceeds shall be paid to Depository and disbursed in accordance with the provisions of Sections 9.2 and 9.3. Except as provided otherwise in the preceding sentence, such proceeds shall be payable, in trust, to Landlord, for deposit in the Trust Account under Article 12 and application to the cost of completion of construction of the Building.

(b) No construction shall be commenced until Tenant shall have delivered to Landlord the original policies of insurance or duplicate originals or certificates thereof together with copies of such insurance policies, as required by this Section 14.3.

(c) To the extent applicable, Tenant shall comply with the provisions of Section 8.2 with respect to the policies required by this Section 14.3. The insurance required by this Section 14.3 shall be primary to all other applicable insurance coverages.

(d) To the extent that the insurance coverages required pursuant to this Section 14.3 duplicate those required by Article 8, Tenant shall not be required to maintain such coverage in duplicate, but in such instance the more extensive coverage shall be maintained.

(e) In addition to the insurance required pursuant to this Section 14.3, Tenant shall, prior to Commencement of

Construction, obtain, or cause to be obtained, and furnish to Landlord, (i) payment and performance bonds in forms and by sureties satisfactory to Landlord, naming the contractor as obligor and Landlord and Tenant as co-obligees, each in a penal sum equal to the amount of the construction contract for the Building (or if there shall be no construction contractor, Landlord may require payment and performance bonds from each subcontractor designated by Landlord, each in a penal sum equal to the amount of such subcontract) or (ii) other security satisfactory to Landlord in its sole discretion, including, without limitation, a clean, irrevocable letter of credit drawn in favor of Landlord, provided the amount, form and issuer shall have been approved by Landlord.

Section 14.4 Commencement of Construction shall occur on or prior to the Construction Commencement Date and thereafter, construction of the Building shall be prosecuted by Tenant with all reasonable diligence, in each case, however, subject to Unavoidable Delays. Construction of the Building shall be Substantially Completed by Tenant in a good and workmanlike manner in accordance with the approved Construction Documents, the Master Development Plan and the Design Guidelines, no later than the date, as such date may be extended for Unavoidable Delays (the "Scheduled Completion Date"), which is sixty (60) months after the earlier of the Construction Commencement Date or the date of the Commencement of Construction. Upon Substantial Completion of the Building, Tenant shall furnish Landlord with

(i) true copies of the temporary certificate(s) of Occupancy for the space in the Building, (ii) a complete set of "as built" plans for the Building prepared by the Architect and accompanied by a written statement by the Architect that the "as built" plans are complete and correct, and (iii) a survey prepared and sealed by a registered surveyor showing all portions of the Building and all easements and other matters of record relating to the Premises, certified by such surveyor to Tenant, Landlord, and to any title company which shall have insured or committed to insure the interests of any party in the Premises, and bearing the certification of such surveyor that all portions of the Building are within the property lines of the Land and do not encroach upon any easement or violate any restriction of record.

"Substantial Completion of the Building" or "Substantially Completed" shall mean (x) substantial completion of all construction work on the Building except for minor details of construction that do not interfere with Tenant's use of the Premises in accordance with this Lease, and the installation of all the Equipment, furnishings and exhibits reasonably necessary for the Building for Museum Uses, (y) the delivery to Landlord of true copies of the temporary Certificate(s) of Occupancy for the space in the Building, and (z) the delivery to Landlord of a statement in writing from the Architect that the construction has been completed substantially in accordance with this Lease, approved Construction Documents, the Master Development Plan, and the Design Guidelines. Notwithstanding anything herein contained

to the contrary, if Tenant shall have failed to deliver the temporary Certificate(s) of Occupancy for the Building, on or before the Scheduled Completion Date as a result of the failure of the Department of Buildings of New York City, or successor body of similar function, to issue the same, such failure shall not constitute a Default hereunder provided the Architect certifies in writing to Landlord that Tenant has completed all work necessary to obtain such temporary Certificate(s) of Occupancy for the Building. In such event, Tenant shall deliver a true copy of the temporary Certificate(s) of Occupancy for the Building to Landlord promptly upon issuance. Within twenty-four (24) months after the date of Substantial Completion of the Building, Tenant shall furnish Landlord with the permanent Certificate(s) of Occupancy for all space in the Building duly issued by the New York City Department of Building, provided, however, Tenant's failure to obtain such permanent Certificate(s) of Occupancy within such twenty-four (24) month period shall not be a Default hereunder if Tenant shall be diligently and in good faith attempting to obtain same, which attempt shall include, but not be limited to, the reasonable expenditures of monies. In any event, Tenant shall promptly furnish Landlord with such permanent Certificate(s) of Occupancy after same has been duly issued.

Section 14.5 [Intentionally Omitted]

Section 14.6

(a) The materials to be incorporated in the Building at any time during the Term shall, upon purchase of same and at all times thereafter, constitute the property of Landlord, and upon construction of the Building or the incorporation of such materials therein, title thereto shall immediately vest in Landlord, provided, however, that (i) Landlord shall not be liable in any manner for payment or otherwise to any contractor, subcontractor, laborer or supplier of materials or other Person in connection with the purchase of any such materials, (ii) Landlord shall have no obligation to pay any compensation to Tenant by reason of its acquisition of title to such materials and Building, (iii) Landlord shall have no obligation with respect to the storage or care of such materials or the Building, and (iv) all materials to be incorporated in the Building shall, immediately upon the purchase of same, be deemed to be leased to Tenant pursuant to this Lease.

(b) Tenant shall not enter into any Construction Agreements, or an agreement with the Architect, unless the same shall have been approved by Landlord, which approval shall not be unreasonably withheld or delayed. Tenant hereby acknowledges that no Construction Agreement shall be approved unless the same shall include (i) the following provisions: "[contractor] [subcontractor] [materialman] hereby agrees that immediately upon the purchase by [contractor] [subcontractor] [materialman] of any materials to be incorporated in the Building (as said term is

defined in the lease pursuant to which the owner acquired a leasehold interest in the property), or of any materials to be incorporated in improvements made thereto, such materials shall become the sole property of Battery Park City Authority, a public benefit corporation, notwithstanding that such materials have not been incorporated in, or made a part of, such Building at the time of such purchase; provided, however, that Battery Park City Authority shall not be liable in any manner for payment or otherwise to [contractor] [subcontractor] [materialman] in connection with the purchase of any such materials and Battery Park City Authority shall have no obligation to pay any compensation to [contractor] [subcontractor] [materialman] by reason of such materials becoming the sole property of Battery Park City Authority", (ii) a provision requiring the signature and delivery to Landlord of waivers of lien with each periodic advance as provided for in Section 12.5(b)(iv); and (iii) a provision meeting the retainage requirement set forth in Section 14.1(b)(iii).

Section 14.7 Tenant may furnish and install a project sign of a design and size and with such text as shall be reasonably satisfactory to Landlord, at a location on the Premises reasonably satisfactory to Landlord and Tenant. Tenant also shall extend to Landlord and any of its designee(s), the privilege of being featured participants in ground-breaking and opening ceremonies to be held at such time and in such manner as Landlord and Tenant shall agree.

Section 14.8 Subject to the last sentence of Section 17.1, Tenant shall remove from the Project Area all fill excavated from the Land and shall dispose of such fill in accordance with all applicable Requirements.

Section 14.9 Tenant acknowledges that it is aware that construction activities of other developers and of Landlord are, or in the future may be, in progress or contemplated within the Project Area. Tenant shall coordinate its construction activities at the Premises with other construction activities taking place in the Project Area, including, without limitation, those carried on pursuant to agreements of lease with developers of other Phase III sites and those incident to the construction of Landlord's Civic Facilities and civic facilities in other portions of the Project Area. In no event shall Landlord or Master Landlord be liable for any delays in Tenant's construction of the Building attributable to other construction activity in the Project Area. In addition, Tenant shall (i) cause any and all work which Tenant is required to or does perform or cause to be performed on, under or adjacent to any portion of any street situated in whole or in part in the Project Area to be performed in accordance with all applicable Requirements and in a manner which does not wrongfully obstruct or hinder ingress to or egress from any portion of the Project Area, (ii) not cause, permit or suffer the storage of construction materials or the placement of vehicles not then being operated in connection with construction activities on any portion of any such street, except as may be permitted by

applicable Requirements, (iii) undertake its construction activities in accordance with normal New York City construction rules and (iv) promptly repair or, if required by Landlord, replace any portion of Landlord's Civic Facilities damaged by the act or omission of Tenant or any agent, contractor or employee of Tenant, any such repair or replacement, as the case may be, to be performed by using materials identical to those used by Landlord, or, if Tenant, despite its best efforts, is unable to procure such materials, using materials in quality and appearance similar to those used by Landlord and approved by Landlord. In the event Tenant shall have failed to promptly repair or replace such portion of Landlord's Civic Facilities as hereinabove provided, Landlord shall have the right to do so at Tenant's expense and Tenant shall, within twenty (20) days after demand, reimburse Landlord for such costs and expenses incurred by Landlord, together with interest on such amounts at the Involuntary Rate for the period from the due date to the date of actual payment. In the event Tenant shall fail to promptly comply with the provisions of clause (ii) above in this Section 14.9, Landlord shall have the right after notice to Tenant to remove such construction materials or vehicles at Tenant's expense and Tenant shall, within twenty (20) days after demand, reimburse Landlord for such costs and expenses incurred by Landlord, together with interest on such amounts at the Involuntary Rate for the period from the due date to the date of actual payment. Landlord shall have the right, but shall not be obligated, to erect at its cost

a perimeter fence enclosing the Premises and any other of the parcels within Phase III, provided such fence shall have entrances so as to permit construction access to the Premises. In the event Landlord erects such a fence, Tenant shall not interfere with same and, if the fence shall be damaged by the act or omission of Tenant or any agent, contractor or employee of Tenant, Tenant shall promptly repair or, if required by Landlord, replace same in the manner provided in the immediately preceding clause (iv) of this Section 14.9. At the request of Landlord, Tenant shall promptly enclose the Land with an 8-foot high chain-mesh fence so as to separate the Premises from the remainder of the Project Area. During construction, Tenant shall maintain Tenant's fence in good condition. Upon Substantial Completion of the Building, Tenant shall remove Tenant's fence and, if constructed, Landlord shall remove its fence from around the Premises. Subject to applicable Requirements, Tenant shall have the right to remove Tenant's fence at an earlier date.

Section 14.10 Tenant shall cause its contractors and all other workers at the Premises connected with Tenant's construction to work harmoniously with each other, and with the other contractors and workers in the Project Area, and Tenant shall not engage in, permit or suffer, any conduct which may disrupt such harmonious relationship.

Section 14.11 Tenant shall construct the Building in a manner which does not interfere with, delay or impede the activities of Landlord, its contractors and other contractors and

developers within the Project Area. If, in Landlord's reasonable judgment, Tenant shall fail to comply with its obligations under this Section 14.11, Landlord may, in addition to any other remedies it may have hereunder, order Tenant (and Tenant's contractors and other Persons connected with Tenant's construction within the Project Area) to cease those activities which Landlord believes interfere with, delay or impede Landlord or such other contractors or developers. No delay or other loss or hindrance of Tenant arising from any such order by Landlord or from the actions or omissions of any other such contractor or developer shall form the basis for any claim by Tenant against Landlord or excuse Tenant from the full and timely performance of its obligations under this Lease except as otherwise expressly set forth in this Lease.

Section 14.12 All persons employed by Tenant with respect to construction of the Building shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law.

Section 14.13 Landlord agrees that the leases to be entered into with other tenants of parcels within Phase III shall require such tenants to comply with requirements substantially similar to those required of Tenant pursuant to Sections 14.2(1), 14.7, 14.9, 14.10, 14.11 and 14.12. Landlord shall enforce compliance with such requirements on a non-discriminatory basis.

ARTICLE 15

REPAIRS

Section 15.1 Tenant shall take good care of the Premises, including, without limitation, roofs, foundations and appurtenances thereto, all Equipment, and to the extent used, controlled or paid for by Tenant, all sidewalks installed or maintained by Tenant, vaults (other than vaults which are under the control of, or are maintained or repaired by, a utility company), sidewalk hoists, water, sewer and gas connections, pipes and mains which are located on or service the Premises (unless the City of New York or a public utility company is obligated to maintain or repair same or same are used in common with the general public or other ground lesses at Battery Park City), and shall put, keep and maintain the Premises in good and safe order and condition, and make all repairs therein and thereon, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, necessary or appropriate to keep the same in good and safe order and condition, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise, provided, however, that Tenant's obligations with respect to Restoration resulting from a casualty or condemnation shall be as provided in Articles 9 and 10 hereof. Tenant shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises. When used in this Section 15.1, the term "repairs" shall include all necessary replacements, alterations

and additions. All repairs made by Tenant shall be equal in quality and class to the original work and shall be made in compliance with (a) all Requirements of Governmental Authorities (including, but not limited to, Local Law No. 5, 1973, as amended), (b) the New York Board of Fire Underwriters or any successor thereto, and (c) the Buildings Code of New York City, as then in force.

Section 15.2 Tenant shall keep clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances, the sidewalks, grounds, chutes and sidewalk hoists comprising, in front of, or adjacent to, the Premises.

Section 15.3 Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Premises, nor shall Landlord have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair to, nor to demolish, the Building. Except as otherwise specifically provided in this Lease or by law, Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises. Tenant shall not clean nor require, permit, suffer nor allow any window in the Premises to be cleaned from the outside in violation of Section 202 of the Labor Law or of the rules of the Industrial Board or other state, county or municipal department, board or body having jurisdiction.

ARTICLE 16

CHANGES, ALTERATIONS AND ADDITIONS

Section 16.1 If Tenant shall comply with the requirements set forth in this Article 16, Tenant shall be permitted to demolish, replace or materially alter the Premises, or any part thereof, or to expand, improve or otherwise add to the Premises, either voluntarily or in connection with repairs or Restorations required by this Lease (collectively, "Capital Improvement").

(a) No Capital Improvement shall be undertaken until Tenant shall have procured from all Governmental Authorities and paid for all permits, consents, certificates and approvals for the proposed Capital Improvement which are required to be obtained prior to the commencement of the proposed Capital Improvement (collectively, "Improvement Approvals"). Landlord shall not unreasonably refuse to join or otherwise cooperate in the application for any such Improvement Approvals, provided such application is made without cost, expense or liability (contingent or otherwise) to Landlord and (ii) complies with the other provisions of this Article 16. True copies of all such Improvement Approvals shall be delivered by Tenant to Landlord prior to commencement of the proposed Capital Improvement.

(b) All Capital Improvements when completed, shall be of such a character as not to reduce the value of the Premises below its value immediately before construction of such Capital Improvement and as not to change the size, types of possible use, or character of the Public Areas, from the size, possible uses or

character of the Public Areas, as the case may be, immediately before construction of such Capital Improvement.

(c) All Capital Improvements shall be made with reasonable diligence and continuity (subject to Unavoidable Delays) and in a good and workmanlike manner and in compliance with (i) all Improvement Approvals, (ii) the Master Development Plan, the Design Guidelines and, if required pursuant to Section 16.2(a) or (b), the plans and specifications for such Capital Improvement as approved by Landlord, (iii) the orders, rules, regulations and requirements of any Board of Fire Underwriters or any similar body having jurisdiction, and (iv) all other Requirements.

(d) No construction of any Capital Improvements shall be commenced until Tenant shall have delivered to Landlord original insurance policies, or certificates of insurance with respect to such policies together with duplicate originals of such policies, issued by responsible insurers that satisfy the requirements of Section 14.3, bearing notations evidencing the payment of premiums or installments thereof then due or accompanied by other evidence satisfactory to Landlord of such payments, unless Landlord shall reasonably determine that the Capital Improvement does not warrant the insurance required by Section 14.3 in which case Landlord shall in its discretion specify such lesser types and levels of insurance appropriate to such Capital Improvement. If, under the provisions of any casualty, liability or other insurance policy or policies then covering the Premises or any part thereof, any consent to such Capital Improvement by the

insurance company or companies issuing such policy or policies shall be required to continue and keep such policy or policies in full force and effect, Tenant, prior to the commencement of construction of such Capital Improvement, shall obtain such consents and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies.

Section 16.2

(a) If the estimated cost of any proposed Capital Improvement shall exceed three hundred and fifty thousand dollars (\$350,000) (as such amount shall be increased as provided in Section 8.2(a)), either individually or in the aggregate with other Capital Improvements being or expected by Tenant to be started in a coordinated manner or at the same time, Tenant shall:

(i) pay to Landlord, within twenty (20) days after demand, the reasonable fees and expenses of any architect or engineer selected by Landlord to review the plans and specifications describing the proposed Capital Improvement and inspect the work on behalf of Landlord; and

(ii) furnish to Landlord the following:

(x) at least thirty (30) Business Days prior to commencement of the proposed Capital Improvement, complete plans and specifications for the Capital Improvement, prepared by a licensed professional engineer or a registered architect approved by Landlord, which approval shall not be unreasonably withheld, all of the foregoing to be subject to

Landlord's review and approval for conformity with the Master Development Plan and the Design Guidelines;

(y) at least ten (10) Business Days prior to commencement of the proposed Capital Improvement, (1) a contract reasonably satisfactory to Landlord in form assignable to Landlord, made with a reputable and responsible contractor approved by Landlord, which approval shall not be unreasonably withheld, providing for the completion of the Capital Improvement in accordance with the schedule included in the plans and specifications, and (2) payment and performance bonds or other security, in each case satisfying the requirements of Section 9.4(a)(ii); and

(z) at least ten (10) Business Days prior to commencement of the proposed Capital Improvement, an assignment to Landlord of the contract so furnished and the bonds or other security provided thereunder, such assignment to be duly executed and acknowledged by Tenant and by its terms to be effective only upon any termination of this Lease or upon Landlord's re-entry upon the Premises or following any Event of Default prior to the complete performance of such contract, such assignment also to include the benefit of all payments made on account of such contract, including payments made prior to the effective date of such assignment.

(b) Notwithstanding that the cost of any Capital Improvement is less than three hundred and fifty thousand dollars

(\$350,000) (as such amount shall be increased as provided in Section 8.2(a)), such cost to be determined as provided in Section 9.1(a), to the extent that any portion of the Capital Improvement involves structural work or work involving the exterior of the Building or a change in the height, bulk or setback of the Building from the height, bulk or setback existing immediately prior to the Capital Improvement, or any change to the interior of the Building that affects the size, types of possible use or character of the Public Areas, or in any other aspect relates to or affects compliance with the Master Development Plan or the Design Guidelines, then Tenant shall furnish to Landlord at least thirty (30) Business Days prior to commencement of the Capital Improvement, complete plans and specifications for the Capital Improvement, prepared by a licensed professional engineer or registered architect approved by Landlord, which approval shall not be unreasonably withheld, and, at Landlord's request, such other items designated in Section 16.2(a)(ii), all of the foregoing to be subject to Landlord's review and approval as provided therein. In addition, Tenant shall pay to Landlord the reasonable fees and expenses of any independent architect or engineer selected by Landlord to review the plans and specifications describing the proposed Capital Improvement and inspect the work on behalf of Landlord.

(c) Landlord shall notify Tenant of Landlord's determination with respect to any request for approval required under this Section 16.2 within fourteen (14) Business Days after

the later of (i) Landlord's receipt of such request from Tenant or (ii) Landlord's receipt of the plans and specifications in accordance with this Section 16.2. Landlord's failure to so notify Tenant within said time period shall be deemed to constitute approval of the proposed Capital Improvement by Landlord.

(d) In the event that Tenant shall desire to modify the plans and specifications which Landlord theretofore has approved pursuant to Section 16.2(a)(ii)(x) or 16.2(b) with respect to, or which will in any way affect, any aspect of the exterior of the Building or the height, bulk or setback thereof, or the interior of the Building regarding the size, types of possible use, or character of the Public Areas, or which will affect compliance with the Design Guidelines or the Master Development Plan, Tenant shall submit the proposed modifications to Landlord. Tenant shall not be required to submit to Landlord proposed modifications of the plans and specifications which otherwise affect solely the interior of the Premises. Landlord shall review the proposed modifications to determine whether or not they (i) conform to the Master Development Plan and the Design Guidelines, and (ii) provide for design, finishes and materials which are consistent with and comparable in quality to those provided for in the approved plans and specifications and shall approve such proposed modifications if they do so conform and so provide. If Landlord determines that the proposed modifications are not satisfactory in light of the above criteria, it shall so

advise Tenant, specifying in what respect the plans and specifications, as so modified, do not conform to the Master Development Plan or the Design Guidelines, or do not provide for design, finishes and materials which are consistent with and comparable in quality to those provided for in the approved plans and specifications. After Landlord shall have so advised Tenant, Tenant shall revise the plans and specifications so as to meet Landlord's objections and shall deliver same to Landlord for review. Each review by Landlord shall be carried out within fourteen (14) Business Days after the date of delivery of the plans and specifications, as so revised (or one or more portions thereof), by Tenant, and if Landlord shall not have notified Tenant of its determination within such period, it shall be deemed to have determined that the proposed changes are satisfactory. Landlord shall not review portions of the approved plans and specifications which Landlord has previously determined to be satisfactory, provided same have not been changed by Tenant.

Section 16.3 All Capital Improvements shall be carried out under the supervision of an architect selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld. Upon completion of any Capital Improvement Tenant shall furnish to Landlord a complete set of "as-built" plans for such Capital Improvement and, where applicable, a survey meeting the requirements of Section 14.4 hereof, together with a permanent Certificate of Occupancy therefor issued by the New

York City Department of Buildings, to the extent a modification thereof was required.

Section 16.4 Title to all additions, alterations, improvements and replacements made to the Premises, including, without limitation, the Capital Improvements, shall forthwith vest in Landlord, without any obligation by Landlord to pay any compensation therefor to Tenant.

ARTICLE 17
REQUIREMENTS OF PUBLIC AUTHORITIES
AND OF
INSURANCE UNDERWRITERS AND POLICIES;
COMPLIANCE WITH MASTER LEASE

Section 17.1 Tenant promptly shall comply with any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, permits, consents, certificates, approvals, codes and executive orders (collectively, "Requirements") without regard to the nature or cost of the work required to be done, extraordinary as well as ordinary, of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus, of any applicable Fire Rating Bureau or other body exercising similar functions, affecting the Premises or any street, avenue or sidewalk comprising a part thereof or adjacent thereto and controlled by Tenant or any vault in or under the Premises, or requiring the removal of any encroachment, or affecting the construction, maintenance, use, operation, management or occupancy of the Premises, whether or not the same involve or require any structural changes or additions in or to the Premises, and without regard to whether or not such changes or additions are required on account of any particular use to which the Premises, or any part thereof, may be put.

Notwithstanding the foregoing, Tenant shall not: be responsible for any Hazardous Materials, as hereinafter defined, existing on

or under the Land as of the date of execution of this Lease; or be required to comply with Requirements of Landlord except (i) as otherwise expressly provided in this Lease or (ii) Requirements of New York City acting solely in its capacity as a Governmental Authority. Tenant also shall comply with any and all provisions and requirements of any casualty, liability or other insurance policy required to be carried by Tenant under the provisions of this Lease.

Section 17.2 Tenant shall have the right to contest the validity of any Requirements or the application thereof. During such contest, compliance with any such contested Requirements may be deferred by Tenant upon condition that before instituting any such proceeding, Tenant shall furnish to Landlord a bond, cash or other security satisfactory to Landlord, securing compliance with the contested Requirements and payment of all interest, penalties, fines, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as is reasonably possible after the issuance of any such contested matters, or after notice (actual or constructive) to Tenant if the applicability of such matters to the Premises is contested, and such proceeding shall be prosecuted to final adjudication with reasonable dispatch. Notwithstanding the foregoing, Tenant promptly shall comply with any such Requirements and compliance shall not be deferred if such noncompliance shall result in the imminent loss or forfeiture of the Premises, or any part thereof or if Landlord shall be in

danger of being subject to civil or criminal liability or penalty by reason of noncompliance therewith. Landlord shall cooperate with Tenant in any such contest to such extent as Tenant may reasonably request, it being understood, however, that Landlord shall not be subject to any liability or the payment of any costs or expense in connection with any proceeding brought by Tenant.

Section 17.3 Tenant shall not cause or create or permit to exist or occur any condition or event relating to the Premises which would, with or without notice or passage of time, result in an event of default under the Master Lease. Tenant shall perform all of Landlord's obligation as tenant under the Master Lease relating to the maintenance and operation of the Premises unless, in accordance with the terms of this Lease, Landlord is specifically obligated to perform any such obligation.

Section 17.4 (a) Tenant covenants that neither Tenant, nor its agents, employees, licensees, contractors, materialmen, visitors, Subtenants, occupants, successors or permitted assigns or any other Person at the Premises shall use or permit to be used Hazardous Materials at or affecting the Premises in any manner which violates any Environmental Laws (as hereinafter defined) governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

(b) Tenant covenants (i) that Tenant shall keep the Premises or cause the Premises to be kept free of Hazardous Materials and not cause or permit the Premises to be used to

generate, manufacture, refine, transport, treat, store, handle, dispose, produce or process Hazardous Materials, except in compliance with all applicable Environmental Laws, and (ii) that Tenant shall ensure compliance by all agents, employees, licensees, contractors, materialmen, visitors, Subtenants, occupants, successors or permitted assigns or any other Persons at the Premises with all applicable Environmental Laws in connection with the Premises, and will ensure that all such Persons obtain and comply with any and all required approvals, registrations or permits in connection with the Premises.

(c) Tenant shall, upon the request of the Landlord, conduct and complete all audits, investigations, studies, samplings and testings relative to Hazardous Materials at or affecting the Premises, and shall promptly forward the results of the foregoing to Landlord. Landlord shall pay, or reimburse Tenant or cause Tenant to be reimbursed for, the cost of any such audits, investigations, studies, samplings and testings, except that Tenant shall bear such cost if in relation to any audits, investigations, studies, samplings or testings, Tenant is shown to have breached any of its covenants under Section 17.4(a) or (b).

(d) In the event Tenant does not timely perform any of the above obligations, Landlord, after reasonable prior notice to Tenant, may perform said obligations at the expense of Tenant and all such costs and expense shall be payable by Tenant to Landlord as Rental within ten (10) days after demand therefor.

Notwithstanding any of the foregoing provisions of this Section 17.4 or any provision of Section 17.4(f) or Section 15.3, Tenant shall not be responsible for, and shall be indemnified by Landlord for any claims of or liabilities to any Person other than any of the parties with respect to, any Hazardous Materials existing on or under the Land as of the date of execution of this Lease.

(e) As used herein, the following terms shall have the following meanings:

(i) "Hazardous Materials" shall mean asbestos, urea formaldehyde, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, or related materials, including, without limitation, those substances and materials defined as "Hazardous Substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.) and in regulations adopted and publications promulgated pursuant thereto.

(ii) "Environmental Laws" shall mean any and all federal, state or local environmental laws, ordinances, rules, or regulations (whether now existing or hereafter enacted or promulgated), or any other such laws, ordinances,

rules or regulations of any other governmental or quasi-governmental entity, or any judicial or administrative interpretations of such laws, ordinances, rules or regulations, including, without limitation, the federal statutes, and regulations promulgated pursuant thereto, described in subparagraph (i) above, and Local Law 76 of 1985 of New York City.

(f) Tenant covenants and agrees, at its sole cost and expense, to indemnify, protect and save Landlord and Master Landlord harmless against and from any and all damages, losses, fines, settlements, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever, known or unknown, contingent or otherwise (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or awarded against Landlord or Master Landlord and arising from or out of (i) (a) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from or affecting the soil, water, air, vegetation, buildings, personal property, persons, animals, or otherwise affecting all or any portion of the Premises; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (c) any lawsuit, brought or threatened, or government order relating to such Hazardous Materials; and (d) any violation of Environmental Laws,

or demands of any Governmental Authority, which are based upon or in any way related to such Hazardous Materials, including, without limitation, attorney and consulting fees and disbursements, investigation and laboratory fees, court costs and litigation expenses; or (ii) the assertion by Tenant of any defense to its obligations under this Section 17.4, including, without limitation, (a) the costs of removal of any and all Hazardous Materials from all or any portion of the Premises or any surrounding areas, (b) additional costs required to take necessary precautions to protect against the release of Hazardous Materials from the Premises into the air, any body of water, any other public domain or any surrounding areas, and (c) costs incurred to comply, in connection with all or any portion of the Premises, with all applicable Environmental Laws with respect to Hazardous Materials.

ARTICLE 18

EQUIPMENT

Section 18.1 All Equipment shall be and shall remain the property of Landlord. Tenant shall not have the right, power or authority to, and shall not, remove any Equipment from the Premises without the consent of Landlord, which consent shall not be unreasonably withheld, provided, however, such consent shall not be required in connection with repairs, cleaning or other servicing, or if (subject to Unavoidable Delays) the same is promptly replaced by Equipment which is at least equal in utility and value to the Equipment being removed. Notwithstanding the foregoing, Tenant shall not be required to replace any Equipment which performed a function which has become obsolete or otherwise is no longer necessary or desirable in connection with the use or operation of the Premises, unless such failure to replace would reduce the value of the Premises or would result in a reduced level of maintenance of the Premises, in which case Tenant shall be required to install such Equipment as may be necessary to prevent such reduction in the value of the Premises or in the level of maintenance.

Section 18.2 Tenant shall keep all Equipment in good order and repair and shall replace the same when necessary with items at least equal in utility and value to the Equipment being replaced.

ARTICLE 19

DISCHARGE OF LIENS; BONDS

Section 19.1 Subject to the provisions of Section 19.2 hereof, Tenant shall not create or permit to be created any lien, encumbrance or charge upon the Premises or any part thereof, the income therefrom or any assets of, or funds appropriated to, Landlord, and Tenant shall not create any lien, encumbrance or charge upon the Project Area or any part thereof. Tenant shall not suffer any other matter or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired.

Section 19.2 If any mechanic's, laborer's or materialman's lien (other than a lien arising out of any work performed by Landlord) at any time shall be filed in violation of the obligations of Tenant pursuant to Section 19.1 against the Premises or any part thereof or the Project Area or any part thereof, or if any public improvement lien created or permitted to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, Tenant, within forty-five (45) days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged of record as aforesaid, within the period aforesaid, and if such lien shall continue for an additional ten (10) days after notice by Landlord to Tenant, then, in addition to any other right or remedy, Landlord may, but

shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest and costs. Any amount so paid by Landlord, including all reasonable costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the Involuntary Rate, from the respective dates of Landlord's making of the payment or incurring of the costs and expenses, shall constitute Rental and shall be paid by Tenant to Landlord within ten (10) days after demand. Notwithstanding the foregoing provisions of this Section 19.2, Tenant shall not be required to discharge any such lien if Tenant is in good faith contesting the same and has furnished a cash deposit or a security bond or other such security satisfactory to Landlord in an amount sufficient to pay such lien with interest and penalties.

Section 19.3 Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the

rendering of any services or the furnishing of materials that would give rise to the filing of any lien against Landlord's interest in the Premises or any part thereof, the Project Area or any part thereof, or any assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all Construction Agreements to provide, that Landlord shall not be liable for any work performed or to be performed at the Premises for Tenant or any Subtenant or for any materials furnished or to be furnished at the Premises for any of the foregoing, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Landlord in and to the Premises or any part thereof, the Project Area or any part thereof, or any assets of, or funds appropriated to, Landlord.

Section 19.4 Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the estate or assets of, or funds appropriated to, Landlord or of any interest of Landlord in the Premises.

ARTICLE 20

NO REPRESENTATIONS BY LANDLORD

Section 20.1 Tenant acknowledges that Tenant is fully familiar with the Land, the Project Area, the physical condition thereof (including, without limitation, the fact that the Land includes substantial portions of landfill which may present special difficulties in the design, construction and maintenance of the Premises and Tenant's Civic Facilities), the Title Matters, the Zoning Resolution and the Requirements, the Master Lease, the Master Development Plan, the Settlement Agreement and the Design Guidelines. Subject to the provisions of Article 17 concerning Hazardous Materials, Tenant accepts the Land and any improvements on the Land in its existing condition and state of repair and, except as otherwise expressly set forth in this Lease, no representations, statements, or warranties, express or implied, have been made by or on behalf of Landlord in respect of the Land, the Project Area, the status of title thereof, the physical condition thereof, including, without limitation, the landfill portions thereof, the zoning or other laws, regulations, rules and orders applicable hereto, Taxes, or the use that may be made of the Land. Tenant has relied on no such representations, statements or warranties. Subject to the provisions of Article 17 concerning Hazardous Materials, and the proviso in Section 21.3, Landlord shall in no event whatsoever be liable for any latent or patent defects in the Land.

Section 20.2 Notwithstanding anything herein contained to the contrary, Landlord represents that Landlord has a leasehold interest in the Land subject to the Title Matters and that the Master Lease, Design Guidelines, Master Development Plan and Settlement Agreement have not been amended, modified or supplemented, except as specifically set forth in the definitions contained in Article 1.

ARTICLE 21

LANDLORD AND MASTER LANDLORD

NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 21.1 Landlord and Master Landlord shall not in any event whatsoever be liable for any injury or damage to Tenant or to any other Person happening on, in or about the Premises and its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person which may be caused by any fire or breakage, or by the use, misuse or abuse of the Premises (including, but not limited to, any of the common areas within the Premises, the Public Areas, Equipment, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or the streets or sidewalk area within the Premises or which may arise from any other cause whatsoever except to the extent any of the foregoing shall have resulted from the negligence or wrongful act of Landlord or Master Landlord, as the case may be, or their respective directors, officers, agents, employees or licensees or from any Hazardous Materials existing on or under the Land as of the date of execution of this Lease; nor shall Landlord or Master Landlord in any event be liable for the acts or failure to act of any other tenant of any premises within the Project Area other than the Premises, or of any agent, representative, employee, contractor or servant of such other tenant.

Section 21.2 Landlord and Master Landlord shall not be liable to Tenant or to any other Person for any failure of water

supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, earthquake or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work except to the extent any of the foregoing shall have resulted from the negligence or wrongful act of Landlord or Master Landlord, as the case may be, or their respective directors, officers, agents, employees or licensees or from any Hazardous Materials existing on or under the Land as of the date of execution of this Lease.

Section 21.3 In addition to the provisions of Sections 21.1 and 21.2, in no event shall Landlord or Master Landlord be liable to Tenant or to any other Person for any injury or damage to any property of Tenant or of any other Person or to the Premises, arising out of any sinking, shifting, movement, subsidence, failure in load-bearing capacity of, or other matter or difficulty related to, the soil, or other surface or subsurface materials, on the Premises or in the Project Area, it being agreed that Tenant shall assume and bear all risk of loss with respect thereto; provided that Landlord and not Tenant shall be

responsible for any loss, cost and expense relating to maintenance of Landlord's Civic Facilities or the retaining wall constructed for Landlord along the most westerly boundary of Battery Park City.

ARTICLE 22

INDEMNIFICATION OF LANDLORD,
MASTER LANDLORD AND OTHERS

Section 22.1 Tenant shall not do, or permit any employee, agent or contractor of Tenant to do, any act or thing upon the Premises or elsewhere in the Project Area which subjects Landlord or Master Landlord to any liability or responsibility for injury or damage to persons or property, or to any liability by reason of any violation of law or any other Requirement. Tenant, to the fullest extent permitted by law, shall indemnify and save Landlord, Master Landlord, and the State of New York, and their agents, directors, officers and employees (collectively, the "Indemnitees"), harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, engineers', architects', and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of any of the following occurring during the Term, except to the extent that the same shall have been caused in whole or in part by the negligence or wrongful act of any of the Indemnitees:

(a) construction of the Building or any other work or thing done in or on the Premises or any part thereof;

(b) any use, non-use, possession, occupation, alteration, repair, Restoration, condition, operation, maintenance or management of the Premises or any part thereof or of any street,

alley, sidewalk, curb, vault, passageway or park or open space or other space comprising a part of the Premises or adjacent thereto, provided such indemnity with regard to any such adjacent streets, alleys, sidewalks, curbs, vaults, passageways and other space or area is limited to an alteration, repair, condition, or maintenance of same which Tenant is obligated to do or perform or which is otherwise done or performed by or results from use by Tenant or any agent, contractor, servant or employee of Tenant;

(c) any negligent or tortious act or failure to act (or act which is alleged to be negligent or tortious) within the Project Area on the part of Tenant or any agent, contractor, materialman, servant or employee of Tenant or any Subtenant;

(d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Premises or any part thereof or in, on or about any street, alley, curb, passageway, sidewalk or vault or other space or area controlled by or on behalf of Tenant and adjacent to the Premises;

(e) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with;

(f) any lien or claim created or permitted to be created by Tenant against any assets of, or funds appropriated to, any of the Indemnitees under the laws of the State of New York or of any

other Governmental Authority or any liability which may be asserted against any of the Indemnitees with respect thereto; or

(g) any tax attributable to the execution, delivery or recording of this Lease.

Section 22.2 The obligations of Tenant under this Article 22 shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

Section 22.3 If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event for which Tenant has agreed to indemnify the Indemnitees in Section 22.1, then Tenant shall resist or defend such claim, action or proceeding (in such Indemnitee's name, if necessary) by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Tenant) or (in all other instances) by such attorneys as Tenant shall select and Landlord shall approve, which approval shall not be unreasonably withheld. In such event, Tenant shall control all decisions in respect of the litigation and settlement of such claims. Notwithstanding the foregoing, Landlord may at its own cost engage its own attorneys experienced in matters of the type in question to assist in its defense. The indemnification obligations imposed upon Tenant under Section 22.1 shall not apply to any settlement separately agreed to by Landlord without Tenant's consent, nor if Landlord retains its own attorneys and

such retention will materially impair or materially diminish Tenant's insurance coverage and Landlord has been so advised in writing by Tenant's insurer.

Section 22.4 In addition to the provisions of Sections 22.1, 22.2 and 22.3, Tenant shall pay all costs incurred by Landlord in connection with the operation, maintenance, repair, restoration and provision of security for the streets, alleys, sidewalks, passageways, open spaces and mapped public parkland adjacent to the Premises which may result or arise from Tenant's use of, or injury or damage to, the Premises, such streets, alleys, sidewalks, passageways, open spaces and mapped public parkland or from any failure of Tenant to meet its obligations under this Lease.

Section 22.5 The provisions of this Article 22 shall survive the Expiration Date with respect to actions or the failure to take any actions or any other matter arising prior to the Expiration Date.

ARTICLE 23

RIGHT OF INSPECTION, ETC.

Section 23.1 Tenant shall permit Landlord and its agents or representatives to enter the Premises at all reasonable times and upon reasonable notice (except in cases of emergency, in which event Landlord shall reasonably attempt to notify Tenant prior to such entry) for the purpose of (a) inspecting the same, (b) determining whether or not Tenant is in compliance with its obligations hereunder, and (c) making any necessary repairs to the Premises and performing any work therein that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work, provided that, except in any emergency, Landlord shall have given Tenant notice specifying such repairs or work and Tenant shall have failed to make such repairs or to do such work within thirty (30) days after the giving of such notice (subject to Unavoidable Delays), or if such repairs or such work cannot reasonably be completed during such thirty (30) day period, to have commenced and be diligently pursuing the same (subject to Unavoidable Delays).

Section 23.2 Nothing in this Article 23 or elsewhere in this Lease shall imply any duty upon the part of Landlord to do any work required to be performed by Tenant hereunder and performance of any such work by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. Landlord, during the progress of any such work, may keep and store at the Premises all necessary materials, tools, supplies

and equipment. Landlord shall not be liable for inconvenience, annoyance, disturbance, or other damage of Tenant or any Subtenant by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into the Premises during the course thereof and the obligations of Tenant under this Lease shall not be affected thereby. To the extent that Landlord undertakes such work or repairs, such work or repairs shall be commenced and completed in a good and workmanlike manner, and with reasonable diligence, subject to Unavoidable Delays, and in such a manner as not to unreasonably interfere with the use of the Premises in accordance with this Lease.

ARTICLE 24

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 24.1 If Tenant at any time shall be in Default, after notice thereof and after applicable grace periods, if any, provided under this Lease for Tenant to cure or commence to cure same, Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform such obligation on Tenant's behalf.

Section 24.2 All reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with its performance of any obligation pursuant to Section 24.1, together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit until the date of actual repayment to Landlord, shall be paid by Tenant to Landlord within ten (10) days after demand. Any payment or performance by Landlord pursuant to Section 24.1 shall not be nor be deemed to be a waiver of any breach or default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings or take such other action as may be permissible hereunder if an Event of Default by Tenant shall have occurred. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep insurance in force as aforesaid to

the amount of the insurance premium or premiums not paid, but Landlord also shall be entitled to recover, as damages for such breach, the uninsured amount of any loss and damage and the reasonable costs and expenses of suit, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by reason of damage to or destruction of the Premises.

ARTICLE 25

NO ABATEMENT OF RENTAL

There shall be no abatement, diminution or reduction of or offset, counterclaim or credit against Rental payable by Tenant hereunder or of the other obligations of Tenant hereunder under any circumstances, except as otherwise specifically provided in this Lease.

ARTICLE 26

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 26.1 Subject to the provisions of law and this Lease, Tenant shall continuously and without interruption throughout the Term (a) use, occupy and operate the Premises for the Museum Uses only and for no other use or purpose, in compliance at all times with the requirements and/or limitations of the First Amendment to the Constitution of the United States and any other provisions of federal or state law that are applicable from time to time, (b) take all reasonable measures in every proper manner to maintain, promote and increase the use of the Building by the general public, and (c) permit access to the Building by the general public for Museum Uses at least during an average of six (6) hours per day for no less than two hundred forty (240) days each calendar year, in accordance with a schedule that Tenant shall establish in advance of each calendar year and provide to Landlord, no less than (30) days before the start of the calendar year, for Landlord's review and information. Tenant shall not at any time require any person to observe or conform to the laws or customs of any religion or denomination as a condition to the admission to, or use or enjoyment of, the Premises, including, without limitation, any facilities located within the Building.

Section 26.2 Tenant shall not at any time use or occupy the Premises or any part thereof, nor at any time permit or suffer the Premises or any part thereof to be used or occupied (i) for

sectarian instruction, as a place of religious worship, or primarily in connection with any part of a program of a school or department of divinity of any religious denomination, (ii) for any public or private, group or individual, prayer in or upon the Premises organized, sponsored, coordinated or supervised by or on behalf of Tenant, and no portion of the Premises shall at any time be designated as a place for any such prayer, (iii) for any unlawful or illegal business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) or that Landlord, in its reasonable judgment, deems offensive by reason of odors, fumes, dust, smoke, noise or other pollution, (iv) for any purpose or in any way in violation of the Certificates of Occupancy or of any governmental laws, ordinances, requirements, orders, directions, rules or regulations, or which may make void or voidable any insurance then in force on the Premises, or (v) without Landlord's consent, for any use which requires a variance, waiver or special permit under the Zoning Resolution of New York City as then in effect. Immediately upon the discovery of any such unpermitted, unlawful, illegal or extra hazardous use, Tenant shall by written notice inform Landlord and Tenant shall take all necessary actions, legal and equitable, to compel the discontinuance of such use. If for any reason Tenant shall fail to take such actions, and such failure shall continue for thirty (30) days after notice from Landlord to Tenant, Landlord is hereby irrevocably authorized to take all such actions in Tenant's name and on

Tenant's behalf, Tenant hereby appointing Landlord as Tenant's attorney-in-fact coupled with an interest for all such purposes. All reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord acting pursuant to the immediately preceding sentence (including, but not limited to, reasonable attorneys' fees and disbursements), together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost, expense or charge until the date of receipt of repayment by Landlord, shall be paid by Tenant to Landlord within ten (10) days after demand and shall constitute Rental under this Lease.

Section 26.3 Tenant shall not knowingly suffer or permit the Premises or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

Section 26.4 Tenant shall take all such actions as Landlord is required to take in connection with the use and occupancy of the Premises under the terms of the Master Lease. Landlord shall perform all obligations of tenant under the Master Lease other than those which are the obligation of Tenant under this Lease.

Section 26.5 Tenant shall be permitted to promulgate and enforce rules and regulations with respect to the use, occupancy and operation of the Premises provided that such rules and

regulations do not conflict with, or circumvent, the covenants, conditions, agreements, and provisions of this Lease, including, without limitation, the terms and provisions of this Article 26.

ARTICLE 27

EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS,
REMEDIES, ETC.

Section 27.1 Each of the following events shall be an
"Event of Default" hereunder:

(a) if Tenant shall fail to pay any item of Rental, or any part thereof, when the same shall become due and payable and such failure shall continue for one hundred eighty (180) days after notice from Landlord to Tenant;

(b) if (i) Commencement of Construction shall not have occurred on or before the Construction Commencement Date (subject to Unavoidable Delays) and such failure shall continue for ninety (90) days after notice from Landlord to Tenant; or (ii) Substantial Completion of the Building shall not have occurred before the Scheduled Completion Date and such failure shall continue for ninety (90) days after notice from Landlord to Tenant; or (iii) the date of Completion of the Building shall not have occurred on or before (subject to Unavoidable Delays) thirty-six (36) months after Substantial Completion of the Building, and such failure shall continue for thirty (30) days after notice from Landlord to Tenant or (iv) if Tenant shall fail to make any portion of the Interim Tenant Deposit as and when required by Section 12.1(a), and such failure shall continue for ninety (90) days after notice from Landlord to Tenant or (v) if Tenant shall fail to make any of the Deferred Tenant Deposits as and when required by Section 12.1(a) or shall fail to make any

other deposit as required under Section 12.2(c), and such failure shall continue for ninety (90) days after notice from Landlord to Tenant or (vi) if Tenant shall fail to make the Initial Tenant Deposit within ^{the earlier of fifteen (15) days after Commencement of Construction} thirty (30) days after the date of execution of this Lease and such failure shall continue for ten (10) days after notice from Landlord to Tenant; uv

(c) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Lease, including, without limitation, any of Tenant's obligations under the provisions of Article 14 of this Lease (other than the obligations referred to in the preceding Section 27.1(b)), and such failure shall continue for a period of thirty (30) days after notice thereof by Landlord to Tenant specifying such failure, unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same, subject to Unavoidable Delays, within such thirty (30) day period and shall, subject to Unavoidable Delays, diligently and continuously prosecute the same to completion;

(d) to the extent permitted by law, if Tenant shall make an assignment for the benefit of creditors;

(e) to the extent permitted by law, if Tenant shall file a voluntary petition under Title 11 of the United States Code or if

such petition is filed against it, and an order for relief is entered, or if Tenant shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, or if Tenant shall take any corporate action in furtherance of any action described in Sections 27.1(d) or 27.1(e);

(f) to the extent permitted by law, if within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated;

(g) if Tenant shall abandon the Premises;

(h) if this Lease or the estate of Tenant hereunder shall be assigned, subleased, transferred, mortgaged or encumbered, or there shall be a Transfer, without Landlord's approval or without compliance with the provisions of this Lease applicable thereto;

(i) if a levy under execution or attachment shall be made against the Premises and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of ninety (90) days;

(j) if Tenant shall at any time fail to maintain its corporate existence in good standing and such failure shall continue for thirty (30) days after notice thereof from Landlord or any governmental agency to Tenant;

(k) if there shall be an Event of Default as provided in Article 42;

(l) if Tenant, subject to Unavoidable Delays, shall fail to operate continuously and without interruption or cause to be operated continuously and without interruption the Premises for Museum Uses from the date of Substantial Completion of the Building to and including the Expiration Date in accordance with the provisions of this Lease and such failure shall continue for thirty (30) days after notice thereof from Landlord to Tenant; or

(m) if for any reason (other than by reason of a change in law of general application whereby Tenant as well as all other institutions similar to Tenant no longer qualify for exemption from income tax) Tenant shall cease to qualify for exemption from

income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code (or any statute in lieu thereof) or shall become a "private foundation" within the meaning of Section 509 of said Code (or statute in lieu thereof).

Section 27.2 If an Event of Default shall occur, Landlord may elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Tenant of the applicable provisions of this Lease and/or to recover damages for breach thereof.

Section 27.3

(a) This Lease and all rights of Tenant under this Lease shall expire and terminate if any Event of Default: (i) described in Section 27.1(d), (e), (f), (h), (i), (j), (k), (l) or (m) shall occur; or (ii) described in Section 27.1 (a), (b), (c), or (g) shall occur and Landlord, at any time thereafter, at its option, gives notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall be not less than three (3) days after the giving of such notice. Such expiration and termination pursuant to the preceding sentence shall be effective as of the date on which the Event of Default described in clause (i) above occurred or the date specified in the notice given pursuant to clause (ii) above, as the case may be, as if such date were the date herein definitely fixed for the expiration of the Term and Tenant immediately shall quit and surrender the Premises. Anything contained herein to the contrary notwithstanding, if

such termination shall be stayed by order of any court having jurisdiction over any proceeding described in Section 27.1(e) or (f), or by any Requirement, then, following the expiration of any such stay, or if the trustee appointed in any such proceeding, Tenant or Tenant as debtor-in-possession shall fail to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within the one hundred twenty (120) days after entry of the order for relief or as may be allowed by the court, or if said trustee, Tenant or Tenant as debtor-in-possession shall fail to provide adequate protection of Landlord's right, title and interest in and to the Premises or adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 27.15 hereof, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, shall have the right, at its election, to terminate this Lease on ten (10) days notice to Tenant, Tenant as debtor-in-possession or said trustee and upon the expiration of said ten (10) day period this Lease shall cease and expire as aforesaid and Tenant, Tenant as debtor-in-possession and/or trustee shall immediately quit and surrender the Premises as aforesaid.

(b) If an Event of Default described in Section 27.1(a) shall occur, or this Lease shall be terminated as provided in Section 27.3(a), Landlord, without notice, may re-enter and repossess the Premises using such force for that purpose as may

be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Tenant by summary proceedings or otherwise.

Section 27.4 If this Lease shall be terminated as provided in Section 27.3(a) or Tenant shall be dispossessed by summary proceedings or otherwise as provided in Section 27.3(b) hereof:

(a) Tenant shall pay to Landlord all Rental payable by Tenant under this Lease to the date upon which this Lease and the Term shall have expired and come to an end or to the date of re-entry upon the Premises by Landlord, as the case may be;

(b) Landlord may complete all construction required to be performed by Tenant hereunder, may pay all costs of such construction required to be paid and remaining unpaid by Tenant, and may repair and alter the Premises in such manner as Landlord may deem necessary or advisable (and may apply to the foregoing any amounts then remaining in the Trust Account and all funds, if any, then held by Depository pursuant to Articles 4, 6, 2, 10, or 14), without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any parts thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent and other sums collected or received as a result of such reletting Landlord shall: (i) first, pay to itself the reasonable cost and expense of terminating this Lease, re-entering, retaking, repossessing, completing construction and repairing or altering the Premises,

or any part thereof, and the cost and expense of removing all persons and property therefrom, including in such costs, brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements, (ii) second, pay to itself the reasonable cost and expense sustained in securing any new tenants and other occupants, including in such costs, brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements and other expenses of preparing the Premises for reletting, and, if Landlord shall maintain and operate the Premises, the reasonable cost and expense of operating and maintaining the Premises, and (iii) third, pay to itself any balance remaining on account of the liability of Tenant to Landlord; Landlord in no way shall be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability.

Section 27.5 No termination of this Lease pursuant to Section 27.3(a) or taking possession of or reletting the Premises, or any part thereof, pursuant to Sections 27.3(b) and 27.4(b), shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or reletting.

Section 27.6 To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting

or modifying any of the provisions of this Article 27. Tenant shall execute, acknowledge and deliver any instruments which Landlord may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

Section 27.7 Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Rental payable hereunder, may be brought by Landlord from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the Term would have expired had there been no Event of Default by Tenant and termination.

Section 27.8 Nothing contained in this Article 27 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater than, equal to or less than the amount of the damages referred to in any of the preceding Sections of this Article 27.

Section 27.9 No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease (unless such receipt cures the Event of Default which was the basis for the notice), shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right

of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order of judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and operation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 27.10 Except as otherwise expressly provided herein or as prohibited by applicable law, Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or re-entry or repossession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease, and Landlord and Tenant waive and shall waive trial by jury in any

action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage. The terms "enter," "re-enter," "entry" or "re-entry," as used in this Lease are not restricted to their technical legal meaning.

Section 27.11 No failure by Landlord or any prior Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 27.12 In the event of any breach or threatened breach by Tenant of any of the covenants, agreements, terms and conditions contained in this Lease, Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or

by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease. To the extent permitted by any Requirement, Tenant waives any requirement for the posting of bonds or other security on any such action.

Section 27.13 Tenant shall pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. All of the sums paid or obligations incurred by Landlord as aforesaid, with interest at the Involuntary Rate, shall be paid by Tenant to Landlord within thirty (30) days after demand by Landlord.

Section 27.14 If an order for relief is entered or if a stay of proceeding or other acts becomes effective in favor of Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous

future performance of Tenant's obligations under this Lease, shall include, without limitation, the following requirements:

(a) that Tenant shall comply with all of its obligations under this Lease;

(b) that Tenant shall pay to Landlord, on the first (1st) day of each month occurring subsequent to the entry of such order, or on the effective date of such stay, a sum equal to the amount by which the Premises diminished in value during the immediately preceding monthly period, but, in no event, an amount which is less than the aggregate Rental payable for such period;

(c) that Tenant shall continue to use the Premises in the manner required by this Lease;

(d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(e) that Tenant shall hire, at its sole cost and expense, such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(f) that Tenant shall pay to Landlord within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, a security deposit as may be required by law or ordered by the court;

(g) that Tenant has and will continue to have unencumbered assets after the payment of all secured obligations and

administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;

(h) that Landlord be granted a security interest acceptable to Landlord in property of Tenant, other than property of any of Tenant's officers, directors, shareholders, employees or partners, to secure the performance of Tenant's obligations under this Lease;

(i) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession assumes this Lease and proposes to assign the same (pursuant to Title 11 U.S.C. § 365, as the same may be amended) to any Person who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to the trustee, Tenant or Tenant as debtor-in-possession, then notice of such proposed assignment, setting forth (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under the Lease, including, without limitation, the assurances referred to in Title 11 U.S.C. § 365(b)(3) (as the same may be amended), shall be given to Landlord by the trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days prior to the date that the trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for

authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the assignment of this Lease.

Section 27.15 Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or by other Requirement shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or by other Requirement.

ARTICLE 28

NOTICES

Section 28.1 Whenever it is provided in this Lease that a notice, demand, request, consent, approval or other communication shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any notice, demand, request, consent, approval, or other communication with respect hereto or the Premises, each such notice, demand, request, consent, approval, or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if given or served as follows:

(a) if by Landlord, by delivery or by mailing the same to Tenant by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant at 342 Madison Avenue, New York, New York, Attention: Co-Chairmen, with a copy thereof to Messrs. Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10153, Attention: J. Philip Rosen, Esq., or to such other address(es) and attorneys as Tenant may from time to time designate by notice given to Landlord as aforesaid; and

(b) if by Tenant, by delivering or by mailing the same to Landlord by registered or certified mail, postage prepaid, return receipt requested, addressed to Landlord at One World Financial Center, New York, New York 10281, Attn: President, or to such other address as Landlord may from time to time designate by notice given to Tenant as aforesaid (with a copy, given in the

manner provided above, addressed to the attention of Landlord's General Counsel, at the address set forth above or at such other address as Landlord may from time to time designate by notice to Tenant as aforesaid).

Section 28.2 Every notice, demand, request, consent, approval, or other communication hereunder shall be deemed to have been given or served when delivered, or if mailed, four (4) Business Days after the date that the same shall have been deposited in the United States mails, postage prepaid, in the manner aforesaid (except that a notice designating the name or address of a person to whom any notice or other communication, or copy thereof, shall be sent shall be deemed to have been given when same is received).

ARTICLE 29

CONSTRUCTION AND MAINTENANCE OF THE CIVIC FACILITIES

Section 29.1

(a) The term "Civic Facilities" shall mean the following improvements in the Project Area:

- (i) Electrical, gas and telephone mains;
- (ii) Water mains;
- (iii) Sanitary and storm sewers;
- (iv) Fire hydrants and Emergency Response Service ("ERS") conduits and boxes;
- (v) Street lighting (conduit, cable, poles, fixtures and connections);
- (vi) Streets;
- (vii) Curbs;
- (viii) Temporary concrete sidewalks;
- (ix) Permanent sidewalks, including cobble strip and paving;
- (x) Landscaped esplanade, including appurtenances located within the pierhead line of the Project Area ("Esplanade");
- (xi) Landscaped park ("South Park"); and
- (xii) Street trees and public works of art.

Landlord and Tenant acknowledge that the improvements described in subparagraphs (i)-(viii) (other than the ERS described in the preceding subparagraph (iv)) and that portion of

the Esplanade referred to in subparagraph (x) comprising the South Cove have been completed.

(b) The term "Tenant's Civic Facilities" shall mean the following portions of the Civic Facilities as more particularly described, referenced or enumerated in Exhibit F hereto and the Design Guidelines and such further specifications, including standards and responsibilities for landscape maintenance, as Landlord may supply:

(i) Permanent sidewalk adjoining the frontage of the project or building along First Place adjacent to the Premises, including cobble strip and paving;

(ii) Street trees (Tenant to install five (5) trees (4-4 1/2" caliper) on First Place, layout, species type and planting specifications to be furnished by Landlord);

(iii) Construction of hard surface and landscaping in accordance with designs to be supplied by Landlord and the Construction Documents approved by Landlord in the areas identified in the Design Guidelines as a landscape easement (minimum 10 feet wide);

(iv) A lockable outdoor waterproofed 110 volt 20 amp ground fault-protected duplex outlet, to be located on an accessible exterior elevation of the Building adjacent to the Esplanade, at a location satisfactory to Landlord; and

(v) Reconstruction of property line wall in accordance with designs to be approved by Landlord and the Construction

Documents approved by Landlord in the area identified in the Design Guidelines on the westerly portion of the site.

(c) The Term "Landlord's Civic Facilities" shall mean all of the Civic Facilities which are not included within the definition of Tenant's Civic Facilities.

Section 29.2 Subject to Unavoidable Delays, (i) Landlord shall commence and diligently complete, or cause to be commenced and substantially completed, in accordance with the Civic Facilities Development Schedule set forth in Exhibit F hereto, the construction or installation of Landlord's Civic Facilities and (ii) Tenant shall commence and diligently complete on or before the Scheduled Completion Date, in accordance with the Construction Documents and the specifications supplied by Landlord, the construction or installation of Tenant's Civic Facilities, in each case, in a good and workmanlike manner and in compliance with normal New York City construction rules and all applicable Requirements.

Section 29.3 Landlord and Tenant each shall take good care of Landlord's Civic Facilities or Tenant's Civic Facilities, as the case may be, and shall keep and maintain the same in good and safe order and condition and free of accumulations of dirt, rubbish, snow and ice, and shall make all repairs (including structural repairs, restorations and replacements necessary to maintain the same in first-class condition (collectively, "Maintenance Obligations"), except that (i) if Tenant installs temporary concrete sidewalks adjacent to the Premises, then

Tenant shall perform Maintenance Obligations in respect of same and (ii) provided that Tenant previously has caused the street trees referred to in Section 29.1(b)(ii) to be installed in accordance with the requirements of this Article 29, from and after the first anniversary of the proper installation of such trees, Landlord shall perform Maintenance Obligations in respect of said street trees. The obligation of Landlord to perform Maintenance Obligations is expressly conditioned upon Tenant's compliance with Tenant's obligations under Section 29.5. The parties contemplate that, after the completion of construction pursuant to Section 29.2, Maintenance Obligations for the portion of the Civic Facilities described in Section 29.1(a)(i) shall be performed by the appropriate utility companies and for those portions of the Civic Facilities described in Section 29.1(a)(ii) through 29.1(a)(vii) shall be performed by New York City. Notwithstanding the initial sentence of this Section 29.3, Maintenance Obligations on the part of Landlord in respect of any portion of the Civic Facilities described in Sections 29.1(a)(i) through (vii) shall terminate on the date that the appropriate utility company or New York City, as the case may be, shall commence performance of Maintenance Obligations in respect of same.

Section 29.4

(a) Tenant's sole remedies for a failure by Landlord to substantially complete Landlord's Civic Facilities as provided in Section 29.2 ("Landlord's Construction Obligations") shall be (i)

an extension of the Scheduled Completion Date by an amount of time equal to the time, if any, by which Tenant's construction of the Building has been delayed solely as a result of such failure, which delay shall constitute an Unavoidable Delay, and (ii) the right to engage in Self-Help, as defined in Section 29.4(b), and to receive the offset against Base Rent and Civic Facilities Payment provided for in Section 29.4(c) (collectively, the "Approved Remedies"). Landlord's failure to perform Landlord's Construction Obligations shall not give rise to any right or remedy except the Approved Remedies, or entitle Tenant to any discount from or offset against any Rental except as set forth in Section 29.4(c) or to any other damages, and no delay, non-performance or part performance by Landlord under Section 29.2 shall release Tenant from or modify any of its obligations under this Lease except as provided herein. Tenant's sole remedies against Landlord for a failure by Landlord to perform its Maintenance Obligations in accordance with Section 29.3 shall be the right to engage in Self-Help and to receive the offset against Civic Facilities Payments provided for in Section 29.4(c), and no such failure shall entitle Tenant to any other right, remedy or damages against Landlord. Notwithstanding the provisions of Section 29.4(b), Tenant shall not be entitled to exercise any of the Approved Remedies at any time that a Default exists under this Lease. No delay, non-performance or part performance by Landlord under

Section 29.3 shall release Tenant from any of its obligations under this Lease.

(b) If (subject to Unavoidable Delays) Landlord fails to perform Landlord's Construction Obligations or thereafter to substantially complete Landlord's Civic Facilities as provided in Section 29.2 with reasonable diligence or if Landlord fails to perform any of Landlord's Maintenance Obligations, Tenant (in its own name and not as agent of Landlord) shall have the right (but shall not be obligated) to undertake Landlord's Construction Obligations or Landlord's Maintenance Obligations, as the case may be ("Self-Help"), in accordance with the provisions of this Section 29.4(b). Prior to engaging in Self-Help, Tenant shall give Landlord notice specifying the nature of Landlord's failure and advising of Tenant's intention to engage in Self-Help. If Landlord shall not have remedied the failure complained of prior to the thirtieth (30th) day after such notice, Tenant shall be entitled to engage in Self-Help, provided that, if such failure shall be of a nature that the same cannot be completely remedied within said thirty (30) day period, Tenant shall not be entitled to engage in Self-Help if Landlord commences to remedy such failure within such period and thereafter diligently and continuously proceeds to remedy same. A copy of any notice given to Landlord pursuant to this Section 29.4(b) shall be sent to all other tenants of Landlord in the Phase III whose names and addresses Landlord shall have given Tenant notice, and, in the event Tenant engages in Self-Help, Tenant shall use its best

efforts to cooperate with such other tenants and to coordinate any actions taken in furtherance thereof with the actions of any tenant(s) that may elect to engage in Self-Help under the applicable provision(s) of any other lease(s) entered into by Landlord with respect to Phase III. In furtherance of Tenant's exercise of the right of Self-Help set forth in this Section 29.4(b), Landlord, upon reasonable notice, shall permit Tenant and its agents or representatives to inspect Landlord's Civic Facilities at all reasonable times for the purpose of determining whether or not Landlord is in compliance with Landlord's Construction Obligations and Landlord's Maintenance Obligations. Landlord hereby grants Tenant a right to enter upon Landlord's Civic Facilities in order to perform Self-Help in accordance with this Section 29.4(b). Tenant shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Landlord by reason of Tenant's exercise of the right of Self-Help hereunder, provided Tenant shall use reasonable efforts to minimize damage caused by Tenant in the exercise of its right of Self-Help.

(c) In the event Tenant engages in Self-Help as provided in Section 29.4(b) with respect to Landlord's Construction Obligations, after submission to Landlord of a written statement of Tenant's expenses with supporting documentation, Tenant shall have the right to offset against the next installment(s) of Base Rent and Civic Facilities Payment an amount equal to the reasonable expenses thereby incurred and/or theretofore paid by

Tenant together with interest thereon at the Involuntary Rate computed with respect to each payment made by Tenant under this Section 29.4(c) from the date notice is received by Landlord of such Payment by Tenant until the date(s) Tenant effectuates the offset(s). In the event Tenant engages in Self-Help as provided in Section 29.4(b) with respect to Landlord's Maintenance Obligations, after submission to Landlord of a written statement of Tenant's expenses with supporting documentation, Tenant shall have the right to offset against the next installment(s) of Civic Facilities Payment an amount equal to the reasonable expenses thereby incurred and/or theretofore paid by Tenant together with interest thereon at the Involuntary Rate computed with respect to each payment made by Tenant under this Section 29.4(c) from the date notice is received by Landlord of such payment by Tenant until the date(s) Tenant effectuates the offset(s).

(d) In the event Landlord shall fail to perform Landlord's Construction Obligations or Landlord's Maintenance Obligations, Landlord shall incur no penalty or liability and Tenant shall have no remedies or rights other than as expressly provided herein, it being agreed by the parties that Landlord's failure to perform Landlord's Construction Obligations or Landlord's Maintenance Obligations shall not be deemed a failure by Landlord to perform a substantial obligation on Landlord's part to be performed under this Lease.

Section 29.5

(a) As its allocable share of the cost of operating, maintaining, repairing, restoring, replacing and upgrading South Park, the Esplanade, the curbs referred to in Section 29.1(a)(vii) and the street trees referred to in Section 29.1(a)(xii) and 29.1(b)(ii), including, at Landlord's election, the costs of creating and maintaining a reasonable reserve fund and of insuring the Civic Facilities or any part thereof (such costs being hereinafter referred to as "Operating Costs"), Tenant, for each Lease Year or portion thereof commencing on the date on which a temporary Certificate of Occupancy shall be issued for the Building (the "Initial Occupancy Date") and ending on the last day of the Term, shall pay to Landlord an annual sum (the "Civic Facilities Payment") determined as follows:

(i) for the period commencing on the Initial Occupancy Date and ending on the last day of the Lease Year in which the Initial Occupancy Date occurs, an amount equal to the product obtained by multiplying the sum computed under the succeeding clause (ii) by a fraction the numerator of which shall be the number of days between the Initial Occupancy Date and the last day of the Lease Year in which the Initial Occupancy Date occurs and the denominator of which shall be three hundred sixty-five (365);

(ii) for each of the next two (2) Lease Years an amount equal to the product derived by multiplying thirty

cents (\$0.30) by the gross square feet of floor area in the Building;

(iii) for each of the next three (3) Lease Years, an amount equal to the product derived by multiplying thirty-five cents (\$0.35) by the gross square feet of floor area in the Building;

(iv) for the next succeeding Lease Year and for each Lease Year thereafter, with respect to the South Park, said curbs and said street trees, and reasonable reserves and insurance, if any, an amount equal to the product of (A) the South Park Budget multiplied by (B) .0068; and

(v) for the period referred to in the preceding clause (iv), with respect to the Esplanade an amount equal to the product of (A) the Esplanade Budget multiplied by (B) .027;

Except that, in lieu of clauses (iv) and (v) above, Landlord, at its sole option and at any time, may establish as an alternative method for determining such allocable share of the Operating Costs and the amount of the Civic Facilities Payment either (A) that Tenant would pay as its share an amount equal to the product of (x) the estimated operating costs for the Residential Parks and the Residential Esplanade, including all curbs and street trees and reasonable reserves and insurance, if any, for the residential portion of the Project Area (the "Parks-Esplanade Budget") multiplied by (y) .0019 or (B) that Tenant would pay as its share an amount equal to the product of (x) the Parks-Esplanade Budget, less amounts payable toward the

Parks-Esplanade Budget by other tenants of Landlord in the Project Area under leases which were originally entered into prior to January 1, 1988, multiplied by (y) .0035. Landlord represents to Tenant that the determination of the Civic Facilities Payment as set forth above is made on the same basis as the determination of such payments in other ground leases entered into by Landlord after January 1, 1988.

Notwithstanding the provisions of the foregoing clauses (iv) and (v), the amount of Tenant's Civic Facilities payment for any Lease Year referred to therein shall not be greater than one hundred twenty-five percent (125%) of Tenant's Civic Facilities Payment for the prior Lease Year.

(b) For each Lease Year commencing with the Lease Year referred to in Section 29.5(a)(iv) (each such lease Year or portion thereof being hereinafter referred to as a "Payment Period"), Landlord shall submit to Tenant (i) an estimate of the Operating Costs for South Park, the curbs referred to in Section 29.1(a)(vii) and the street trees referred to in Section 29.1(a)(xii) and 29.1(b)(ii) and reasonable reserves and insurance, if any, for such Payment Period (the "South Park Budget") and (ii) an estimate of the Operating Costs for the Esplanade for such Payment Period (the "Esplanade Budget"; collectively, the "Civic Facilities Budget"). The South Park Budget shall be an amount computed by multiplying (A) the estimated Operating Costs of all parks (as such term is reasonably defined by Landlord) in or adjacent to the Project

Area other than parks situated in the area described in the final sentence of this Section 29.5(b) ("Residential Parks") and all curbs and street trees installed in the Project Area except in the area described as aforesaid by (B) a fraction the numerator of which shall be the number of square feet in South Park, and the denominator of which shall be the total number of square feet in all Residential Parks. The Esplanade Budget shall be an amount computed by multiplying (A) the estimated Operating Costs of the entire Esplanade in the Project Area other than such portion of the Esplanade as extends along the North Cove from (i) the point where the northern line of Liberty Street as extended intersects the North Cove to (ii) the point where the extension of the western line of North End Avenue intersects the North Cove (the "Residential Esplanade") by (B) a fraction, the numerator of which is the number of linear feet of the Esplanade for the Phase III and the denominator of which is the total number of linear feet of the Residential Esplanade. Tenant shall pay to Landlord the Civic Facilities Payment due in respect of each such Payment Period in equal monthly installments payable in advance on the first (1st) day of each month that occurs within such Payment Period. As soon as shall be practicable after the end of such Payment Period, Landlord shall submit to Tenant a statement setting forth the Operating Costs incurred by Landlord during such Payment Period, together with supporting documentation. Within ten (10) days of the date any such statement and documentation are submitted to Tenant, Tenant shall pay the

amount, if any, by which Tenant's allocable share of Operating Costs for the applicable Payment Period exceeds the Civic Facilities Payment made by Tenant during such Payment Period. In the event the Civic Facilities Payment made by Tenant during any Payment Period exceeds Tenant's allocable share of Operating Costs, Tenant shall have the right to offset against the next monthly installments of Civic Facilities Payment the amount of such excess. The area referred to in the second sentence of this Section 29.5(b) is bounded on the south by the northern line of Liberty Street extended west to the North Cove, on the west by proceeding from said line as extended along North Cove to the extension of the western line of North End Avenue and then along said western line as extended to the southern line of Vesey Street, on the north by proceeding along said southern line to the western line of Marginal Street, Wharf or Place, and on the east by the western line of Marginal Street, Wharf or Place between the southern line of Vesey Street and the northern line of Liberty Street, all as shown on survey L.B.-45-BZ by Benjamin D. Goldberg (Earl B. Levell, S.P. Belcher, Inc.), prepared February 23, 1983, last amended May 27, 1983.

(c) Notwithstanding any other provision of this Article 29, in the event Landlord's Civic Facilities or any portion thereof shall be destroyed or damaged by fire or other casualty or shall have been taken by the exercise of the right of condemnation or eminent domain, if the reasonable cost of restoring or replacing any portion of Landlord's Civic Facilities (including, without

limitation, construction costs, bidding costs, attorneys', architects', engineers' and other professional fees and disbursements, and supervisory fees and disbursements) shall exceed the aggregate of the monies available to Landlord therefor from the reserve fund created pursuant to Section 29.5(a) and the net proceeds, if any, of insurance or condemnation available to Landlord for such purpose, Tenant shall pay to Landlord two and seven-tenths percent (2.7%) of such excess. Landlord shall submit to Tenant a statement setting forth (i) the cost of such restoration or replacement (together with supporting documentation) and (ii) on an itemized basis, the monies available to pay such cost within thirty (30) days of the date any such statement and documentation are submitted to Tenant, Tenant shall make the payment provided for above. All monies payable to Landlord under this Section 29.5(c) shall constitute Rental under this Lease.

(d) Subject to the applicable covenants of Landlord's General Bond Resolution and Series Resolution, both adopted May 5, 1972, Landlord shall have the right to transfer to a trust or other entity the responsibility of performing Landlord's Maintenance Obligations and the right to receive installments of the Civic Facilities Payments directly from Tenant, and if Landlord shall effect such a transfer, Tenant shall have the right to require such trust or other entity to perform the responsibilities and exercise the rights so transferred notwithstanding any transfer of Landlord's interest in the

parcels, or in the leases of the parcels, within Phase III. Upon such a transfer by Landlord and provided such trust or other entity, in writing, assumes and agrees to perform Landlord's Maintenance Obligations for the benefit of all tenants or parcels within the Phase III, from and after the date of such assumption, Landlord shall have no further liability with respect hereto. Prior to effecting such transfer, Landlord shall consult with Tenant with respect to the composition of such trust or other entity. Landlord shall give Tenant notice of the consummation of any such transfer. Notwithstanding such transfer, the Civic Facilities Payment shall, at all times, constitute Rental hereunder. Thereafter, for each Lease Year, such trust or other entity shall submit to Tenant the Civic Facilities Budget and other information required by Section 29.5(b) and shall give notice thereof to Tenant in the same manner as would otherwise be required of Landlord. Notwithstanding any transfer of Landlord's Maintenance Obligations, Tenant shall retain the rights provided in this Article 29 with respect to Self-Help and offsets against Civic Facilities Payments.

ARTICLE 30

STREETS

Landlord represents and warrants that Battery Place, First Place and Second Place have been dedicated to New York City.

ARTICLE 31

STREET WIDENING

If at any time during the Term any proceedings are instituted or orders made by any Governmental Authority (other than Landlord acting solely in its capacity as Landlord and not as a Governmental Authority) for the widening or other enlargement of any street contiguous to the Premises requiring removal of any projection or encroachment on, under or above any such street, or any changes or alterations upon the Premises, or in the sidewalks, vaults (other than vaults which are under the control of, or are maintained or repaired by, a utility company), gutters, curbs or appurtenances, Tenant, with reasonable diligence (subject to Unavoidable Delays) shall comply with such requirements, and on Tenant's failure to do so, Landlord may comply with the same in accordance with the provisions of Article 24. Tenant shall be permitted to contest in good faith any proceeding or order for street widening instituted or made by any Governmental Authority, provided that during the pendency of such contest Tenant deposits with Landlord security in amount and form reasonably satisfactory to Landlord for the performance of the work required in the event that Tenant's contest should fail. In no event shall Tenant permit Landlord to become liable for any civil or criminal liability or penalty as a result of Tenant's failure to comply with reasonable diligence (subject to Unavoidable Delays) with any of the foregoing orders. Any widening or other enlargement of any such street and the award or

damages in respect thereto shall be deemed a partial condemnation and be subject to the provisions of Article 10.

ARTICLE 32

SUBORDINATION; ATTORNMENT

Section 32.1 Landlord's interest in this Lease, as this Lease may be modified, amended or supplemented, shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease.

Section 32.2 If by reason of (a) a default under the Master Lease, or (b) a termination of the Master Lease pursuant to the terms of the Settlement Agreement, such Master Lease and the leasehold estate of Landlord in the Premises demised hereby are terminated, Tenant will attorn to the then holder of the reversionary interest in the Premises demised by this Lease and will recognize such holder as Tenant's Landlord under this Lease. Tenant shall execute and deliver, at any time and from time to time, upon the request of the Landlord or of the Master Landlord any further instrument which may be reasonably necessary or appropriate to evidence such attornment. Tenant waives the provision of any statute or rule of law now or hereafter in effect which may give or purport to give Tenant any right of election to terminate this Lease or to surrender possession of the Premises in the event any proceeding is brought by the Master Landlord to terminate the same, and agrees that this Lease shall not be affected in any way whatsoever by any such proceeding.

ARTICLE 33

EXCAVATIONS AND SHORING

If any excavation shall be made or contemplated to be made for construction or other purposes upon property adjacent to the Premises, Tenant either:

(a) shall afford to Landlord or, at Landlord's option, to the person or persons causing or authorized to cause such excavation the right to enter upon the Premises in a reasonable manner for the purpose of doing such work as may be necessary, without expense to Tenant, to preserve any of the walls or structures of the Premises from injury or damage and to support the same by proper foundations, provided that (i) such work shall be done promptly, in a good and workmanlike manner and subject to the Master Development Plan, Design Guidelines and all applicable Requirements, (ii) Tenant shall have an opportunity to have its representatives present during all such work and (iii) Tenant shall be indemnified by Landlord in the event Landlord performs such excavation, or such other person performing such excavation, as the case may be, against any injury or damage to the Premises or persons or property therein which may result from any such work, but shall not have any claim against Landlord for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder; or

(b) shall do or cause to be done all such work, at Landlord's or such other person's expense, as may be necessary to preserve any of the walls or structures of the Premises from

injury or damage and to support the same by proper foundations, provided that Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder.

ARTICLE 34

CERTIFICATES BY LANDLORD AND TENANT

Section 34.1 At any time and from time to time upon not less than twenty (20) days notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord or any other party specified by Landlord a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rental has been paid, and stating whether or not to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which Tenant may have knowledge.

Section 34.2 At any time and from time to time upon not less than twenty (20) days notice by Tenant, and so long as no Event of Default occurred, Landlord shall execute, acknowledge and deliver to Tenant or any other party specified by Tenant a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rental has been paid, and stating whether or not to the best knowledge of Landlord, Tenant is in Default in the performance of any covenant, agreement or condition contained in this Lease,

and, if so, specifying each such Default of which Landlord may have knowledge.

Section 34.3 At the request of Tenant, Landlord shall request a certificate in respect of the Master Lease from Master Landlord, in accordance with Section 20.1 of the Master Lease. If Master Landlord shall fail to deliver such a certificate, then, in lieu thereof, Landlord shall execute, acknowledge and deliver to Tenant a statement certifying that Landlord has not executed and delivered to Master Landlord any instrument modifying the Master Lease (or if Landlord has executed such an instrument, stating the modifications) and that, to the best of Landlord's knowledge, the Master Lease is in full force and effect.

ARTICLE 35

CONSENTS AND APPROVALS

Section 35.1 All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 35.2 If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then (i) unless expressly provided otherwise in this Lease, if the party who is to give its consent or approval shall not have notified the other party within fifteen (15) Business Days or such other period as expressly specified in this Lease after receiving such other party's request for a consent or approval that such consent or approval is granted or denied, and if denied, the reasons therefor in reasonable detail, such consent or approval shall be deemed granted. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then in the event that there shall be a final determination that the consent or approval was unreasonably

withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and such granting of the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval.

Section 35.3 If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld, such consent or approval shall, in addition, not be unreasonably delayed.

Section 35.4 Except as specifically provided herein, no fees or charges of any kind or amount provided shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease.

ARTICLE 36

SURRENDER AT END OF TERM

Section 36.1 On the last day of the Term or upon any earlier termination of this Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 27 hereof, Tenant shall well and truly surrender and deliver up to Landlord the Premises in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, existing at the date hereof, created by or consented to by Landlord or which lettings and occupancies by their express terms and conditions extend beyond the Expiration Date, and which Landlord shall have consented and agreed, in writing, may extend beyond the Expiration Date, without any payment or allowance whatever by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date.

Section 36.2 On the last day of the Term or upon any earlier termination of the Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 27 hereof, Tenant shall deliver to Landlord Tenant's executed counterparts of and any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary Certificates of Occupancy then in effect for the Premises, and all warranties and guarantees then in

effect for the Building and all warranties and guarantees which Tenant has received in connection with any work or services performed or Equipment installed in the Premises, together with a duly executed assignment thereof to Landlord, all financial reports, books and records required by Article 41 hereof and any and all other documents of every kind and nature whatsoever relating to the Premises.

Section 36.3 Any personal property of Tenant, any Subtenant or any other Person which shall remain on the Premises for ten (10) days after the termination of this Lease and after the removal of Tenant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant, Subtenant or such other Person and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any other Person.

Section 36.4 The provisions of this Article 36 shall survive any termination of this Lease.

ARTICLE 37

ENTIRE AGREEMENT

This Lease, together with the Exhibits and Schedule hereto, contains all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein or therein set forth and other than as may be expressly contained in any written agreement between the parties executed simultaneously herewith.

ARTICLE 38

QUIET ENJOYMENT

Landlord covenants that, so long as Tenant is paying Rental and otherwise observing the terms and conditions of this Lease, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or from Landlord or any Person claiming through Landlord and free of any encumbrance created or suffered by Landlord, except the Title Matters, and the Light and Air Easement.

ARTICLE 39

ARBITRATION

In such cases where this Lease expressly provides for the settlement of a dispute or question by arbitration, and only in such cases, the party desiring arbitration shall appoint a disinterested person as arbitrator on its behalf and give notice thereof to the other party who shall, within fifteen (15) days thereafter, appoint a second disinterested person as arbitrator on its behalf and give notice thereof to the first party. The two (2) arbitrators thus appointed shall together appoint a third disinterested person within fifteen (15) days after the appointment of the second arbitrator, and said three (3) arbitrators shall, as promptly as possible, determine the matter which is the subject of the arbitration and the decision of the majority of them shall be conclusive and binding on all parties and judgment upon the award may be entered in any court having jurisdiction. If a party who shall have the right pursuant to the foregoing to appoint an arbitrator fails or neglects to do so, then and in such event, the other party (or if the two (2) arbitrators appointed by the parties shall fail to appoint a third arbitrator when required hereunder, then either party) may apply to the American Arbitration Association (or any organization successor thereto), or in its absence, refusal, failure or inability to act, may apply for a court appointment of such arbitrator. The arbitration shall be conducted in the City and County of New York and, to the extent applicable and

consistent with this Article 39, shall be in accordance with the Commercial Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function. The expenses of arbitration shall be shared equally by Landlord and Tenant but each party shall be responsible for the fees and disbursements of its own attorneys and the expenses of its own proof. Landlord and Tenant shall sign all documents and do all other things necessary to submit any such matter to arbitration and further shall, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder. The arbitrators shall have no power to vary or modify any of the provisions of this Lease and their jurisdiction is limited accordingly. If the arbitration takes place pursuant to Article 14 hereof or concerns any Capital Improvement or Restoration, then each of the arbitrators shall be a licensed professional engineer or registered architect having at least ten (10) years' experience in the design of Building comparable to the Premises, and, to the extent applicable and consistent with this Article 39, such arbitration shall be conducted in accordance with the Construction Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function. Notwithstanding anything to the contrary contained in this Article 39, if the arbitration concerns any dispute arising with respect to any amounts or computation of Rental, the

Landlord shall have the option in its sole discretion to submit such dispute to any national accounting firm with offices in New York City for a binding and final determination by such firm, intended to have the same effect as an arbitration award by an arbitrator.

ARTICLE 40

INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE 41

FINANCIAL AND OTHER REPORTS

Section 41.1 Tenant, from and after the date upon which any portion of the Premises is occupied or otherwise placed in use shall furnish to Landlord the following:

(a) As soon as practicable after the end of each fiscal year of Tenant, and in any event within one hundred and twenty (120) days thereafter, Tenant shall furnish to Landlord financial statements of operations of the Premises, for such year, setting forth in each case, in comparative form, the corresponding figures for the previous fiscal year, all in reasonable detail and accompanied by a report and opinion thereon of a Certified Public Accountant approved by Landlord, which approval shall not be unreasonably withheld, which report and opinion shall be prepared in accordance with Accounting Principles, and which shall also be accompanied by a compilation in reasonable detail of attendance figures as shown on Tenant's records, and a projection of Gross Entry or Exit Receipts, attendance and Base Rent for the next fiscal year setting forth in each case, in comparative form, the corresponding figures for the previous fiscal year, all in reasonable detail;

(b) In any year in which the Gross Entry or Exit Receipts or attendance figures as reported by Tenant pursuant to this Section 41.1 decrease by more than five percent (5%) from the Gross Entry or Exit Receipts or attendance figures either in Tenant's projections furnished to Landlord previously or in

Tenant's reports thereof for the previous year, Tenant shall at any time after ~~forty-eight~~ (48) months following Completion of Construction, upon Landlord's request, prepare an Attendance Plan for Tenant's current and following fiscal year. Such Attendance Plan shall include specific descriptions of reasonable advertising, promotional and other actions that Tenant proposes to take which are reasonably expected to increase attendance by the general public at the Building and to increase Gross Entry or Exit Receipts. Following preparation by Tenant of such Attendance Plan pursuant to Landlord's request, Tenant shall use its best efforts to implement the advertising, promotional or other actions as described by Tenant in such Attendance Plan.

Section 41.2 Within thirty (30) days after request by Landlord between the date of Commencement of Construction and the date of Completion of the Building, Tenant shall provide to Landlord information about Tenant's assets and anticipated expenditures in such form and detail and with such supporting documentation as Landlord requests.

Section 41.3 If at any time Tenant shall furnish to any Governmental Authority or lender or donor operating statements or financial reports in addition to those required to be furnished by Tenant to Landlord pursuant to Section 41.1 or Section 41.2, then upon Landlord's request, Tenant promptly shall furnish to Landlord copies of all such additional operating statements and financial reports. At the time at which Tenant furnishes any such operating statements or reports Tenant may inform Landlord

of its belief that the public disclosure of information contained therein or any part thereof would cause substantial injury to the competitive position of Tenant's enterprise and request that, to the extent permitted by law, Landlord attempt to avoid such disclosure. In the event Tenant makes such request, Landlord shall use its best efforts to avoid such disclosure (but shall incur no liability to Tenant if Landlord reasonably believes it is complying with any provision of applicable law requiring such disclosure).

Section 41.4 Tenant shall keep and maintain at all times full and correct records and books of account of the operations of the Premises in accordance with such generally accepted accounting standards and otherwise in accordance with any applicable requirements of any Governmental Authority or lender or donor and shall accurately record and preserve for a period of six (6) years the records of its operations upon the Premises. Within fifteen (15) days after request by Landlord, Tenant shall make said records and books of account available from time to time for inspection by Landlord and Landlord's designee during reasonable business hours at a location designated by Tenant in New York City. At any time at which Tenant shall make said records and books of account available for inspection, it may inform Landlord of its belief that the public disclosure of the information contained therein or any part thereof would cause substantial injury to the competitive position of Tenant's enterprise and request that to the extent permitted by law

Landlord attempt to avoid such disclosure. In the event Tenant makes such request, Landlord shall use its best efforts to avoid such disclosure (but shall incur no liability to Tenant if Landlord reasonably believes it is complying with any provision of applicable law requiring such disclosure).

ARTICLE 42

RECORDING OF LEASE

Either Landlord or Tenant may record this Lease or any amendment or modification of this Lease, and each shall, upon the request of the other, join in the execution of a memorandum of this Lease or a memorandum of any amendment or modification of this Lease in proper form for recordation. Notwithstanding the provisions of the preceding sentence, neither Tenant nor the Commission shall record any instrument against or with respect to the Balance of Site 14 in which any reference is made to this Lease or any provision of this Lease. Any violation of the preceding sentence, which violation is not cured within ten (10) days after demand by Landlord, shall be deemed to be an Event of Default under Section 27.1(k).

ARTICLE 43

NO DISCRIMINATION

Section 43.1 Tenant in its use, operation or occupancy of the Premises and employment and conditions of employment in connection therewith, or in the subletting of the Premises or any part thereof, or in connection with the erection, maintenance, repair, Restoration, alteration or replacement of, or addition to, any Building or Tenant's Civic Facilities shall (a) not discriminate nor permit discrimination against any person by reason of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status and (b) comply with all applicable Federal, State and local laws, ordinances, rules and regulations from time to time in effect and the provisions of the Master Lease prohibiting such discrimination or pertaining to equal employment opportunities.

Section 43.2 Tenant shall be bound by and shall include the following paragraphs (a) through (e) of this Section 43.2 in all Construction Agreements, service and management agreements and agreements for the purchase of goods and services and any other agreements relating to the operation of the Premises, in such manner that these provisions shall be binding upon the parties with whom such agreements are entered into (any party being bound by such provisions shall be referred to in this Section as "Contractor"):

(a) Contractor shall not discriminate against employees or applicants for employment because of race, creed, color,

religion, national origin, ancestry, sex, age, disability or marital status, shall comply with all applicable Federal, State and local laws, ordinances, rules and regulations from time to time in effect and the provisions of the Master Lease prohibiting such discrimination or pertaining to equal employment opportunities and shall undertake programs of affirmative action to ensure that employees and applicants for employment are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or restraining, including apprenticeship and on-the-job training.

(b) Contractor shall request each employment agency, labor union and authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish it with a written statement that such employment agency, labor union or representative will not discriminate because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status and that such agency, union or representative will cooperate in the implementation of contractor's obligation hereunder.

(c) Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed,

color, religion, national origin, ancestry, sex, age, disability or marital status.

(d) Contractor shall comply with all of the provisions of the Civil Rights Law of the State of New York and Sections 291-299 of the Executive Law of the State of New York, shall upon reasonable notice furnish all information and reports deemed reasonably necessary by Landlord and shall permit access to its relevant books, records and accounts for the purpose of monitoring compliance with the Civil Rights Law, such sections of the Executive Law and Contractor's obligations pursuant to this Article 43.

(e) Contractor shall include in all agreements with subcontractors the foregoing provisions of Sections 43.2(a) through 43.2(d) in such a manner that said provisions shall be binding upon the subcontractor and enforceable by Contractor, Tenant and Landlord. Contractor shall take such action as may be necessary to enforce the foregoing provisions. Contractor shall promptly notify Tenant and Landlord of any litigation commenced by or against it arising out of the application or enforcement of these provisions, and Tenant and Landlord may intervene in any such litigation.

Section 43.3 Tenant has reviewed and participated in the development of the Affirmative Action Program, a copy of which is annexed hereto as Exhibit G. Tenant shall, and shall cause each of its agents, contractors and subcontractors to, promptly and

diligently carry out its obligations under such Program in accordance with the terms thereof.

Section 43.4 The provisions of Sections 43.1 and 43.2 shall apply to any advertising, promotional or marketing activity carried out by Tenant in connection with the Premises.

ARTICLE 44

MISCELLANEOUS

Section 44.1 The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 44.2 The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof.

Section 44.3 The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 44.4 Depository may pay to itself out of the monies held by Depository pursuant to this Lease its reasonable charges for services rendered hereunder. Tenant shall pay Depository any additional charges for such services.

Section 44.5 If more than one entity is named as or becomes Tenant hereunder, Landlord may require the signatures of all such entities in connection with any notice to be given or action to be taken by Tenant hereunder except to the extent that any such entity shall designate another such entity as its attorney-in-fact to act on its behalf, which designation shall be effective until receipt by Landlord of notice of its revocation.

Each entity named as Tenant shall be fully liable for all of Tenant's obligations hereunder. Any notice by Landlord to any entity named as Tenant shall be sufficient and shall have the same force and effect as though given to all parties named as Tenant. If all such parties designate in writing one entity to receive copies of all notices, Landlord agrees to send copies of all notices to that entity.

Section 44.6 The liability of Landlord or of any Person who has at any time acted as Landlord hereunder for damages or otherwise shall be limited to Landlord's interest in the Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Neither Landlord nor any such Person nor any of the members, directors, officers, employees, agents or servants of either shall have any liability (personal or otherwise) hereunder beyond Landlord's interest in the Premises, and no other property or assets of Landlord or any such Person or any of the members, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder. No member, commissioner, director, officer, employee, agent or

servant of Tenant shall have any liability (personal or otherwise) hereunder.

Section 44.7 Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease or the Leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 44.8 Tenant shall store all refuse from the Premises off the streets in an enclosed area on the Premises, and in a manner reasonably satisfactory to Landlord and in accordance with the requirements of municipal and/or private sanitation services serving the Premises.

Section 44.9 Each of the parties represents to the other that it has not dealt with any broker, finder or like Person in connection with this Lease. Tenant and the Commission shall jointly and severally hold harmless and indemnify Landlord from and against all expenses, damage and liability including without limitation, attorneys fees and disbursements, arising out of any claim for brokerage fees, finders fees, commissions or other like compensation in connection with this Lease made by any claimant with whom Tenant or the Commission has had any conversations or negotiations. The obligations under the previous sentence shall survive any termination of this Lease.

Section 44.10 This Lease may not be changed, modified, or terminated orally, but only by a written instrument of change, modification or termination executed by the party against whom enforcement of any change, modification, or termination is sought.

Section 44.11 This Lease shall be governed by and construed in accordance with the laws of the State of New York.

Section 44.12 The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, Landlord and Tenant and their respective successors and (except as otherwise provided herein) assigns. The provisions of this Lease shall not benefit or be enforceable by any Person other than the parties hereto. Landlord reserves, and shall be entitled to exercise, the absolute right, in its sole discretion, to waive any condition, covenant, agreement or requirement of Article 12 or any other provision of this Lease, and in regard to Article 12, shall be entitled at any time to direct Trustee to make any and all advance(s) of funds in the Trust Account to the extent requested by Tenant.

Section 44.13 All references in this Lease to "Articles" or "Sections" shall refer to the designated Article(s) or Section(s), as the case may be, of this Lease.

Section 44.14 Any and all of Tenant's right, title and interest in all plans and drawings required to be furnished by Tenant to Landlord under this Lease, including, without limitation, the Pre-Schematics, the Schematics, the Design

Development Plans and the Construction Documents, and in any and all other plans, drawings, specifications or models prepared in connection with construction at the Premises, any Restoration or Capital Improvement, shall become the sole and absolute property of Landlord upon the Expiration Date or any earlier termination of this Lease. Tenant shall deliver all such documents to Landlord promptly upon the Expiration Date or any earlier termination of this Lease. Tenant's obligation under this Section 44.14 shall survive the Expiration Date.

Section 44.15 All references in this Lease to "licensed professional engineer", "licensed surveyor" or "registered architect" shall mean a professional engineer, surveyor or architect who is licensed or registered, as the case may be, by the State of New York.

Section 44.16 If Battery Park City Authority or any successor to its interest hereunder ceases to have any interest in the Premises as lessee under the Master Lease or there is at any time or from time to time any sale or sales or disposition or dispositions or transfer or transfers of Landlord's interest in the Premises as lessee under the Master Lease, the seller or transferor shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed on or after the date of such sale or transfer relative to the interest sold or transferred, and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties

and the Person who acquires or owns the lessee's interest in the Premises under the Master Lease, including, without limitation, the purchaser or transferee in any such sale, disposition or transfer, and any fee owner of the Premises upon termination of the Master Lease, that, subject to the provisions of Section 44.6, such Person has assumed and agreed to carry out any and all agreements, covenants and obligations of Landlord hereunder accruing from and after the date of such acquisition, sale or transfer.

Section 44.17 Tenant shall have the right to use the name Battery Park City in any advertising and promotional materials in connection with the use and occupancy of the Building, but only for the purpose of identifying the location of the Premises.

Section 44.18 Landlord shall not enter into or cause there to be entered into any amendment or supplement to the Master Lease, Master Development Plan or Design Guidelines which (a) increases or otherwise materially affects Tenant's rights or obligations under this Lease, or (b) limits the permitted uses of the Premises. In the event Landlord shall enter into or cause to be entered into an amendment or supplement to the Master Lease, Master Development Plan or Design Guidelines which is not in conformity with this Section 44.18. Tenant shall not be obligated to comply with the provisions of such amendment or supplement which do not so conform and the same shall have no force or effect with respect to Tenant. Notwithstanding anything herein contained to the contrary, Tenant shall have no right to

approve any amendment, ~~modification or supplement~~ to the Master Lease, Master Development Plan or Design Guidelines which does not affect the Premises.

Section 44.19 Nothing herein is intended nor shall be deemed to create a joint venture or partnership between Landlord and Tenant, nor to make Landlord in any way responsible for the debts or losses of Tenant.

Section 44.20 Whenever Landlord shall have the right to approve the architect, engineer or lawyer to be employed by Tenant, any architect, engineer or lawyer so approved by Landlord at any time during the Term shall be deemed to be acceptable to Landlord for employment by Tenant at any time thereafter, unless Landlord shall have good cause for refusing to allow the continued employment of such consultant. Whenever Tenant is required to obtain Landlord's approval of an architect, engineer or lawyer, Tenant shall notify Landlord if it intends to employ an architect, engineer or lawyer previously approved. In the event that Landlord shall refuse to approve the continued employment of such consultant, it shall so notify Tenant, specifying the reason therefor.

Section 44.21 This Lease may be executed in one or more counterparts, each of which shall be deemed an original, and which together shall constitute one and the same instrument.

Section 44.22 The approval of the New York Public Authorities Control Board is required for the execution and

delivery of this Lease and no provision hereof shall have any force or effect before such approval.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

STATE of NEW YORK

By: [Signature]
Governor

BATTERY PARK CITY AUTHORITY

A LIVING MEMORIAL TO THE
HOLOCAUST:
MUSEUM OF JEWISH HERITAGE

By: [Signature]
Chairman

By: [Signature]
President

By: [Signature]

By: _____

By: [Signature]
Co-Chairman

By: [Signature]
Co-Chairman

By: _____
Co-Chairman

By: _____
Co-Chairman

By: _____
Co-Chairman

The Commission hereby consents to the terms and provisions of this Lease, and covenants and agrees to perform those agreements, covenants and conditions which apply to the Commission:

[Signature]
[Signature]

NEW YORK HOLOCAUST COMMISSION, INC.

By: [Signature]

By: [Signature]

By: [Signature]

By: _____

By: _____

Signature-1

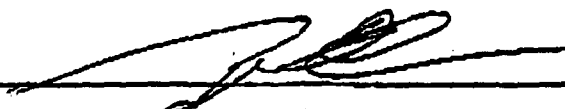
IN WITNESS WHEREOF, Landlord and Tenant have executed this
Lease as of the day and year first above written.

BATTERY PARK CITY AUTHORITY

By: _____
Chairman

By:  _____
President

A LIVING MEMORIAL TO THE HOLOCAUST:
MUSEUM OF JEWISH HERITAGE

By:  _____
Co-Chairman

By: _____
Co-Chairman

The Commission hereby consents to the terms and provisions
of this Lease, and covenants and agrees to perform those
agreements, covenants and conditions which apply to the
Commission:

NEW YORK HOLOCAUST COMMISSION, INC.

By:  _____

By: _____

IN WITNESS WHEREOF, Landlord and Tenant have executed this
Lease as of the day and year first above written.

BATTERY PARK CITY AUTHORITY

A LIVING MEMORIAL TO THE HOLOCAUST:
MUSEUM OF JEWISH HERITAGE

By: _____
Chairman

By: *Frankel*
Co-Chairman

By: _____
President

By: *Am*
Co-Chairman

By: _____
Co-Chairman

By: _____
Co-Chairman

By: _____
Co-Chairman

The Commission hereby consents to the terms and provisions of
this Lease, and covenants and agrees to perform those agreements,
covenants and conditions which apply to the Commission:

NEW YORK HOLOCAUST COMMISSION, INC.

By: *Frankel*

By: *Am*

By: _____

By: _____


By: _____

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Lease as of the day and year first above written.

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A LIVING MEMORIAL TO THE HOLOCAUST:
MUSEUM OF JEWISH HERITAGE

By: _____
Chairman

By:  _____
Co-Chairman

By: _____
President

By: _____
Co-Chairman

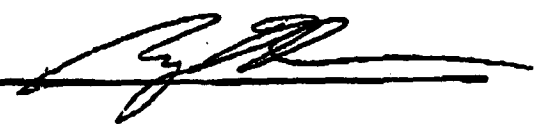
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Co-Chairman

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Co-Chairman

By: _____
Co-Chairman

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NEW YORK HOLOCAUST COMMISSION, INC.

By:  _____

By: _____

By: _____

By: _____

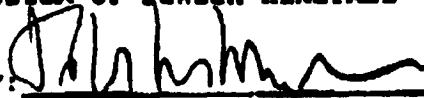
By: _____

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Lease as of the day and year first above written.

BATTERY PARK CITY AUTHORITY

A LIVING MEMORIAL TO THE HOLOCAUST:
MUSEUM OF JEWISH HERITAGE

By: _____
Chairman

By:  _____
Co-Chairman

By: _____
President

By: _____
Co-Chairman

By: _____
Co-Chairman

By: _____
Co-Chairman

By: _____
Co-Chairman

The Commission hereby consents to the terms and provisions of
this Lease, and covenants and agrees to perform those agreements,
covenants and conditions which apply to the Commission:

NEW YORK HOLOCAUST COMMISSION, INC.

By: _____

By: _____

By: _____

By: _____

By: _____

IN WITNESS WHEREOF, Landlord and Tenant have executed this
Lease as of the day and year first above written.

BATTERY PARK CITY AUTHORITY

A LIVING MEMORIAL TO THE HOLOCAUST:
MUSEUM OF JEWISH HERITAGE

By: _____
Chairman

By: 
Co-Chairman

By: _____
President

By: _____
Co-Chairman

By: _____
Co-Chairman

By: _____
Co-Chairman

By: _____
Co-Chairman

The Commission hereby consents to the terms and provisions of
this Lease, and covenants and agrees to perform those agreements,
covenants and conditions which apply to the Commission:

NEW YORK HOLOCAUST COMMISSION, INC.

By: 

By: _____

By: _____

By: _____

By: _____

IN WITNESS WHEREOF, Landlord and Tenant have executed this
Lease as of the day and year first above written.

BATTERY PARK CITY AUTHORITY

A LIVING MEMORIAL TO THE HOLOCAUST:
MUSEUM OF JEWISH HERITAGE

By: _____
Chairman

By: *[Signature]*
Co-Chairman

By: _____
President

By: _____
Co-Chairman

By: _____
Co-Chairman

By: _____
Co-Chairman

By: _____
Co-Chairman

The Commission hereby consents to the terms and provisions of
this Lease, and covenants and agrees to perform those agreements,
covenants and conditions which apply to the Commission:

NEW YORK HOLOCAUST COMMISSION, INC.

By: _____

By: _____

By: _____

By: _____

By: _____

EXHIBIT A

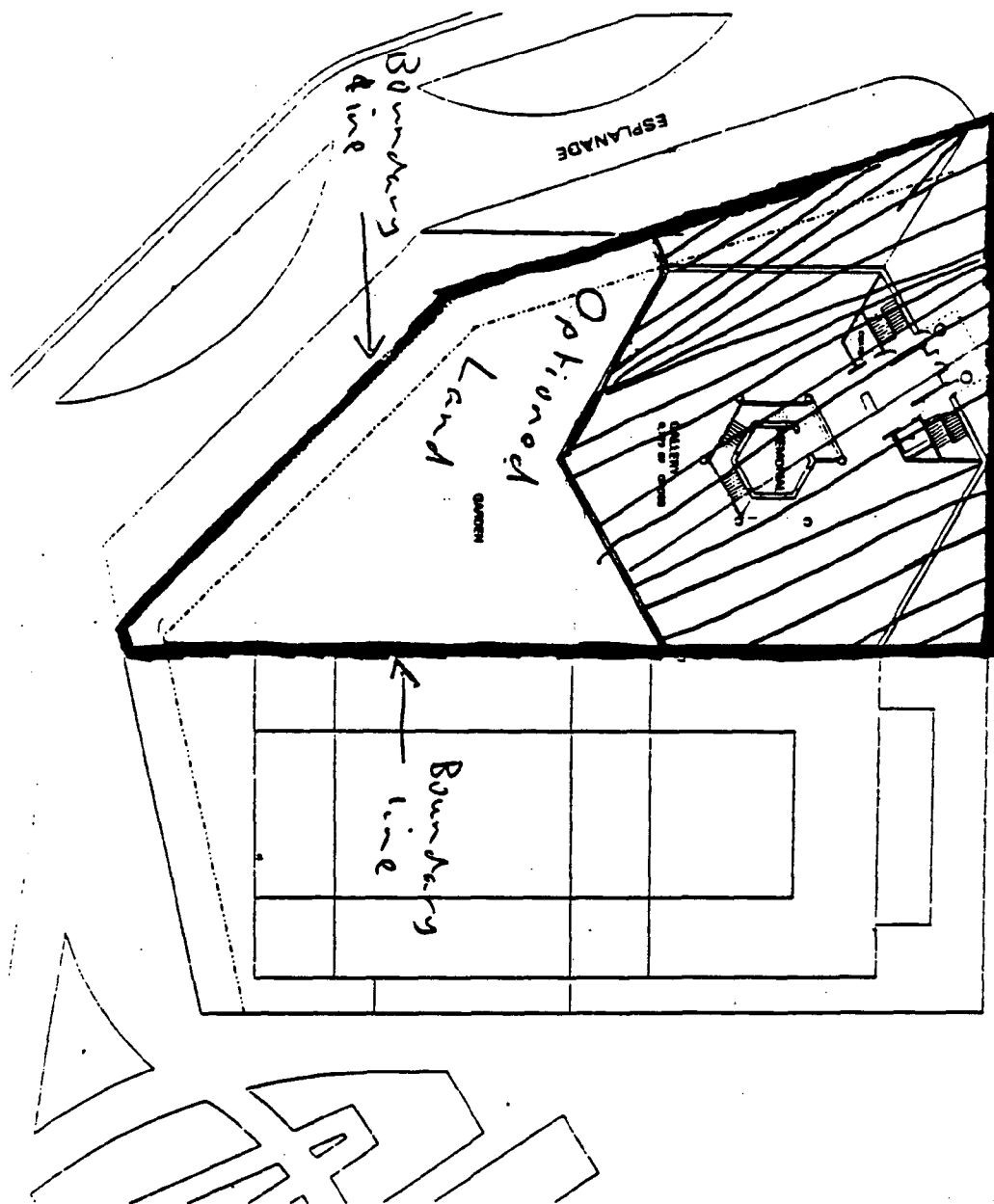
CERTIFICATE

I, [Kevin Roche] [Ivan Chermayeff], hereby certify that
\$ _____ was paid or is due and owing by the New York Holocaust Memorial
Commission, Inc. to me [my firm] prior to and as of August 16, 1994, for fees and charges
at rates not in excess of \$150 per hour for work prior to said date which was performed in
accordance with usual professional practices to effect the design of the [Museum/Museum
exhibits] in accordance with the currently approved pre-schematic design for the Museum,
and that the performance of such work reduced by a sum no less than the sum stated
above the amount of my [my firm's] fees and charges for future work to complete the
design of the [Museum/Museum exhibits].

[Kevin Roche] [Ivan Chermayeff]

Dated: _____, 1994

Exhibit B



FIRST PLACE

NOT TO SCALE

1/2" = 1'

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EXHIBIT C

TITLE MATTERS

1. The Master Lease.

2. The Settlement Agreement.

3. Memorandum of Understanding, dated as of November 8, 1979, among the Governor of the State of New York, the Mayor of the City of New York and the President and Chief Executive Officer of New York State Urban Development Corporation and Battery Park City Authority, as supplemented by letter, dated November 8, 1979, from the President and Chief Executive Officer of New York State Urban Development Corporation and Battery Park City Authority to the Mayor of the City of New York and as supplemented by 1986 Supplemental Memorandum of Understanding dated as of August 15, 1986 among the Governor of the State of New York, the Mayor of the City of New York and Battery Park City Authority.

4. The Purchase Option granted by New York State Urban Development Corporation, Battery Park City Authority, and BPC Development Corporation to the City of New York, dated June 6, 1980 and recorded in Reel 527 at page 163 in the Office of the City Register, New York County, as amended by Amendment to Option to Purchase dated August 15, 1986 and Second Amendment to Option to Purchase dated May 18, 1990.

5. Agreement between BPC Development Corporation, Battery Park City Authority and the City of New York, dated as of April 23, 1982 and recorded October 27, 1982, in Reel 646 at page 700 in the Office of the City Register, New York County.

6. Declaration of Zoning Lot and Development Restrictions dated July 9, 1982 made by BPC Development Corporation and Battery Park City Authority and recorded in Reel 648 at page 276 in the Office of the City Register, New York County.

7. Such state of facts as an accurate survey would disclose.

8. Declaration of Covenants and Restrictions made by Battery Park City Authority dated March 15, 1984, and recorded March 21, 1984, in Reel 776 at page 360, in the Office of the City Register, New York County.

9. Grant of Easements made by BPC Development Corporation, Battery Park City Authority and the City of New York, recorded in Reel 644 at page 480, in the Office of the City Register, New York County.

10. Zoning and other laws, ordinances, governmental regulations, orders and requirements pertaining to the premises.

Exh. 6 F D

Certificate of Budget Approval

In connection with the execution of a lease between the Battery Park City Authority and A Living Memorial to the Holocaust: Museum of Jewish Heritage, the Battery Park City Authority has reviewed "allowable costs" section of the attached budget (as defined in the lease). The Authority hereby approves such budget for allowable costs except to the extent the design fees exceeds \$1,781,060 and the soft cost contingency exceeds \$110,427.



David Emil
President

A Living Memorial to the Holocaust
Museum of Jewish Heritage
Estimated Project Costs

Exhibit D

ALLOWABLE COSTS

HARD COST

Building per 6/13/94 Drawings, 19,546 S.F.	\$ 7,918,583
Support Areas Interior Finishes, 3,578 S.F.	125,230
Exhibition Space Finishes, 13,534 S.F.	3,248,160
Mechanical Spaces, 1,090 S.F.	16,350
Contingency 5%	565,416

TOTAL HARD COST

\$ 11,873,739

SOFT COSTS

Architect, Structure & MEP	1,475,000
Geotechnical	20,000
Vertical Transportation	15,000
Lighting	15,000
Acoustical/AV	20,000
Exterior Wall	30,000
Security	20,000
Landscaping	10,000
Building Code Expeditor	15,000
Exhibit/Graphic Design	609,030
Subtotal	2,229,030
Testing & Inspection	150,000
Insurance Bonds (1.0% of Hard Cost)	118,737
Accounting	15,000
Insurance (1.0% of Hard Cost)	118,737
Permit Fees	25,000
Contingency (5% of Soft Costs)	132,825

TOTAL SOFT COSTS

\$ 2,789,330

TOTAL ALLOWABLE COSTS

\$ 14,663,069

EXCLUDED COSTS

Chase Bank	2,000,000
Architects & Consultants	402,000
Rent & Expenses	270,000

TOTAL EXCLUDED COSTS

\$ 2,672,000

PROJECT TOTAL

\$17,335,069

* figures may be adjusted to reflect costs obligated and /or paid prior to commencement of construction

EXHIBIT E

Pre-schematic Drawings prepared by Kevin Roche/John Dinkeloo and Associates,
all dated June 7, 1994 and numbered as indicated below:

1. Site Plan
2. Entry Level Plan
3. 2nd Floor Plan
6. Roof Plan
7. First Place Elevation
8. Esplanade Elevation
11. Section

EXHIBIT F

BATTERY PARK CITY SITE 14A

1. LANDLORD'S CIVIC FACILITIES DEVELOPMENT SCHEDULE

<u>Esplanade to the south building line of Site 14</u>	<u>Date of Substantial Completion</u>
--	---

All work except planting which cannot be performed before the spring following Substantial Completion of Buildings.	Later of Substantial Completion of Buildings or October 1, 1996.
---	--

<u>South Park</u>	<u>Date of Substantial Completion</u>
-------------------	---

All work except for planting which cannot be performed before the fall following Substantial Completion of the Park.	Later of Substantial Completion of Buildings or June 1, 1997.
--	---

<u>Property Line Wall</u>	<u>Date of Substantial Completion</u>
---------------------------	---

All work involved in the property line wall foundation.	October 1, 1996
---	-----------------

2. TENANT'S CIVIC FACILITIES

DEVELOPMENT SCHEDULE

Each portion of Tenant's Civic Facilities shall be substantially completed no later than the Scheduled Completion Date of the Buildings.

TENANT'S CIVIC FACILITIES DRAWINGS

Vollmer Associates, South Residential Phase III Infrastructure Informational Drawings A1-A6, addendum No. 8 dated November 25, 1986, as same may be amended, and all referenced details and specifications including Street Tree Planting specifications. Notwithstanding anything contained the foregoing to the contrary, improvements must be built by Tenant to standards of New York City Department of Transportation.

EXHIBIT G
BATTERY PARK CITY
SITE 14A
AFFIRMATIVE ACTION PROGRAM

This Affirmative Action Program has been adopted by Battery Park City Authority ("BPCA"), pursuant to the provisions of Section 1974-d of the Public Authorities Law as modified by Section 317 of the Executive Law, and in accordance with Article 15A of the Executive Law, in order to assist A Living Memorial to the Holocaust: Museum of Jewish Heritage ("Tenant"), its contractors, subcontractors and suppliers (collectively, "Contractors") and all other persons participating in the development, construction, operation and maintenance of that portion of Battery Park City designated as Site 14A (the "Project") in complying with their respective obligations to give minority and women-owned business enterprises and minority group members and women opportunity for meaningful participation on contracts entered into in connection with the Project, and to permit BPCA to carry out its statutory obligations in connection with the construction, management and operation of real estate development projects at Battery Park City.

1. **Compliance with Contract: Inclusion of Affirmation Action Provisions**

(a) Tenant shall include in all Construction Agreements (as defined in the lease to which this Affirmative Action Program annexed (the "Lease")) and other instruments pursuant to which materials or services are furnished for the construction of the Project (collectively, the "Contract") the Affirmative Action Provisions set forth in the Appendix to this Affirmative Action Program. Defined terms in this Affirmative Action Program not elsewhere defined in the Lease shall have the meanings provided in said Appendix. The Workforce Participation and MBE and WBE Participation goals set forth in said Appendix shall be determined jointly by BPCA and Tenant (or its Contractors, as applicable) for each Contract using the procedures provided in Section 3 of this

Affirmative Action Program.

(b) Compliance by Contractor, or by Tenant when it enters into a Contract, with the affirmative action and non-discrimination obligations relating to opportunities for participation in contracts by MBEs and WBEs, as set forth in this Affirmative Action Program, or in the Lease, or any Contract, shall, as required by Section 317 of the Executive Law, be determined in accordance with the provisions of Section 313, subsections 5,6,7, & 8 and Section 316 of the Executive Law, as same may be amended from time to time and rules or regulations promulgated therefor.

(c) Each Contractor's compliance or non-compliance with its MBE and WBE affirmative action and non discrimination obligations will be determined by BPCA, and solely for the purpose of compliance with the said provisions of the Executive Law, BPCA shall be deemed to be the "Contracting Agency" as that term is used in such provisions of the Executive Law. Tenant shall require from each Contractor, and shall within three (3) days of receipt thereof deliver to BPCA, such compliance reports as BPCA may require, and shall take such other actions on the part of Owner as set forth in the Appendix to this Affirmative Action Program as BPCA may direct.

(d) Tenant shall, and shall cause its Contractors to, consult with BPCA regarding fulfillment of its obligations hereunder prior to solicitation for any subcontractors, or consultants.

2. MBE and WBE Participation

In partial fulfillment of its obligations under this Affirmative Action Programs, Tenant shall, throughout the Construction Period, (i) conduct a thorough and diligent search for qualified MBEs and WBEs to carry out portions of the Project, (ii) review the qualifications of each MBE and WBE suggested to Tenant by BPCA, and (iii) enter into, or cause its Contractors to enter into Contracts with qualified and available MBEs and WBEs, respectively, in accordance with and subject to the procedures set forth in Section 3

below.

3. MBE/WBE Participation Procedures. Tenant shall observe the following procedures throughout the Construction Period:

(a) Tenant shall advise BPCA promptly of Tenant's proposed design and construction schedule for the Project and afford BPCA's Affirmative Action Officer a reasonable opportunity to become familiar with the proposed scope, nature and scheduling of Tenant's major Contracts. As promptly as practicable, but in any event at least thirty (30) but not more than sixty (60) days prior to issuing requests for proposals or invitations to bid for any Contracts, Tenant shall furnish BPCA with a projected schedule which shall include a detailed description (the "Contract Schedule") of such Contracts, broken down by trade. Tenant will update or amend the Contract Schedule as required to reflect any changes in Tenant's proposed Contracts and will promptly notify BPCA thereof. The Contract Schedule will set forth the anticipated times at which invitations to bid or requests for proposals are to be issued for work in each trade, the scope of such work, the type and quantities of materials and equipment to be purchased and the estimated contract value or range of values of such work or purchases. In formulating the Contract Schedule, Tenant will confer with BPCA to identify those portions of the work or purchases which can be divided into separate contract packages or which can be subcontracted, so as to maximize opportunities for participation in the work by MBEs and WBEs. To the extent practicable, Tenant shall prepare separate contract packages for such work which shall be bid and let separately by Tenant or which shall be subcontracted separately by Tenant's Contractors, and shall not be bid or let as part of any other work. Tenant shall, at least 30 but not more than 60 days prior to the issuance of an invitation or request to bid for each individual contract, furnish BPCA with written notice thereof.

(b) BPCA will review the Contract Schedule as promptly as practicable, and will provide to Tenant a list of eligible MBEs and WBEs for all or portions of the work. Tenant shall then promptly notify BPCA in writing that all qualified MBEs and WBEs on such list

have been contacted and of any business enterprise not on such list which claims to be an MBE or WBE and has expressed an interest in bidding on the work. As promptly as practicable after receipt of Tenant's notice, BPCA will advise Tenant in writing whether the business enterprises which have expressed an interest in the work, but were not included on the list of MBEs and WBEs furnished to Tenant by BPCA, are eligible MBEs or WBEs, provided that BPCA shall have no obligation to advise Tenant whether any business enterprise is an eligible MBE or WBE until a determination has been made with respect to such business enterprise by the Division.

(c) Concurrently, BPCA and Tenant will review the eligible MBEs and WBEs to determine the extent to which such MBEs and WBEs are qualified and available to perform all or portions of the work identified in the contract packages. In general, an MBE or WBE will be deemed to be qualified to perform work if its personnel have successfully performed work of a similar nature in the past and demonstrate the present ability, to organize, supervise and perform work of the kind and quality contemplated for the Project. In determining whether an MBE or WBE meets these standards, BPCA and Tenant shall consider, experience in the trade, technical competence, organizational and supervisory ability and general management capacity. In the event that BPCA and Tenant cannot agree on whether an eligible MBE or WBE is qualified and available hereunder, BPCA's determination on those issues shall be final and conclusive for the purposes of this Program, unless Tenant shall, within ten (10) days after written notice of such determination is given by BPCA, request that the matter be determined by arbitration pursuant to Section 3(e) below.

(d) Tenant shall invite all MBEs and WBEs found qualified and available hereunder (including those MBEs and WBEs on the list provided by BPCA pursuant to Section 3(b) above) to submit proposals for work required to be performed under Tenant's contract packages (including both contracts and subcontracts). At least ten (10) days prior to any award of any Contract by Tenant, Tenant shall notify BPCA in writing of all responses or

bids in connection with Tenant's requests for proposals or invitations to bid.

(e) Except as shall be otherwise provided for in Section 316 of the Executive Law as to Contractors, in the event that Tenant shall demand arbitration as to the question of the qualifications or availability of any MBE or WBE pursuant to Section 3(c) above, the matter shall be determined in the County of New York by three arbitrators, one of whom shall be appointed by BPCA, one by Tenant and the third by agreement of the two arbitrators appointed by the parties (or failing such agreement, the third arbitrator shall be appointed by the American Arbitration Association), in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided that, anything to the contrary contained in such rules notwithstanding, (i) Tenant shall, together with such demand for arbitration, submit in writing to such arbitrators (when selected) and BPCA its reasons for its disagreement with BPCA's determination on such question, (ii) BPCA shall, within five (5) days after its receipt of such written statement from Tenant, submit to such arbitrators and Tenant the reasons for such challenged determination, and (iii) such arbitrators shall, after such hearing, if any, as they may deem appropriate, render their decision within ten (10) days after receipt of such written statement from BPCA. Such decision shall be conclusive and final for all purposes of this Program, provided that, anything to the contrary contained herein notwithstanding, any decision that an eligible MBE or WBE is or is not available or qualified to perform work on a particular Contract shall not preclude a later determination by Tenant, BPCA or the arbitrators to the contrary in light of changed or different circumstances. Tenant and BPCA shall each bear its own costs and attorneys fees in connection with such arbitration and shall share equally the costs of such arbitration (including the arbitrator's fees).

(f) Tenant shall maintain complete and accurate written records of (i) its efforts to identify and contract with MBEs and WBEs, (ii) the reasons, if applicable, for any determination by Tenant that an MBE or WBE is not qualified or available to perform work on the Project, and (iii) the reasons, if applicable, why contracts or subcontracts were not

awarded to MBEs and WBEs found qualified hereunder. Tenant shall also maintain complete and accurate written records of all Contracts awarded on the Project, which records shall contain, without limitation, the dollar value of such awards and a description of the scope of the work awarded. Such records shall be furnished to BPCA quarterly and at such other times as BPCA may reasonably request.

(g) Prior to the issuance by Tenant of any letter of intent to a Contractor, Tenant shall provide to BPCA a written list of MBEs and WBEs to which subcontracts are to be let.

(h) Tenant shall not enter into any Contract, nor permit its Contractors to enter into any Contract, unless Tenant has certified to BPCA in writing that such Contract has been awarded in accordance with the requirements of this Program and BPCA has approved, in writing, the award of such Contract. BPCA shall advise Tenant within five (5) business days of receipt of any such proposed Contract and Tenant's written certification whether or not BPCA has approved such Contract and shall, if such Contract has not been approved, advise Tenant of BPCA's reasons for disapproval. In the event that BPCA shall fail to advise Tenant within such five (5) business day period that a proposed Contract has been approved or disapproved hereunder, BPCA shall be deemed to have approved such Contract for purposes of this Section 3(h). After award of a Contract, Tenant shall not enter into, or permit its Contractors to enter into, any modification or amendment of such Contract which will reduce the scope of work to be performed by an MBE or WBE or diminish the Contract Price of any Contract (including subcontracts) awarded to an MBE or WBE without the prior written consent of BPCA. Tenant shall promptly furnish BPCA with the name of each party to whom Tenant (or its Contractors) awards a Contract, together with, in the case of each MBE Contract or WBE Contract, a summary of the scope of services to be performed under such Contract and the Contract price thereof, as the same may be amended from time to time.

(i) Tenant shall, and shall cause its Contractors to, submit to BPCA within five (5) days after execution of any Approved MBE Contract or Approved WBE Contract or amendment thereto between Tenant or its Contractor and an MBE or WBE, a copy of such contract or amendment.

(j) Tenant shall, at the execution of this Agreement and from time to time thereafter, designate an affirmative action officer, with full authority to act on behalf of and to represent Tenant in all matters relating to this Program and advise BPCA in writing of such designee.

4. Subsequent Construction and Protect Management.

(a) After the Construction Period, in connection with all subsequent construction work on the Project, including interior improvements, alterations, capital improvements, structural repairs, Restoration (as defined in the Lease) and replacement of, or additions to, the Project undertaken by Tenant (including its successors and subtenants), whether on its own behalf or on behalf of its subtenants or other occupants (collectively, "Subsequent Work"), Tenant shall, and shall cause its Contractors to, provide meaningful participation to qualified and available MBEs and WBEs which submit competitive proposals for such work. Additionally, Tenant shall provide meaningful participation in all service and management agreements, agreements for the purchase of goods and services and other agreements relating to the operation of the Project (collectively, "Operating Agreements") to MBEs and WBEs. To such end, Tenant shall, and shall cause its Contractors to, (i) conduct a thorough and diligent search for qualified MBEs and WBEs, (ii) review the qualifications of each MBE and WBE suggested to Tenant by BPCA and (iii) afford an opportunity to submit proposals for all Subsequent Work and Operating Agreements to those MBEs and WBEs found qualified. Prior to the end of the Construction Period, Tenant shall meet with BPCA as required by BPCA to review the operation and status of this Program and develop a plan for meeting the MBE and WBE participation goals set forth above. Thereafter, Tenant shall meet with BPCA on a periodic basis as required by BPCA to review the operation and status

of this Program and such plan and identify measures to be taken by Tenant to ensure that the MBE and WBE participation goals are met. Tenant shall submit quarterly reports to BPCA setting forth the nature and scope of Subsequent Work carried out and Operating Agreements in effect during the preceding quarter, all efforts made by Tenant and its Contractors to employ qualified MBEs and WBEs to perform the Subsequent Work and participate in the Operating Agreements and all contracts let to MBEs and WBEs. The obligations under this Section 4(a) shall continue until BPCA finds that this Program is no longer necessary to give minority and women-owned business enterprises opportunity for meaningful participation on contracts in connection with the construction, operation and maintenance of the Project.

(b) In connection with Subsequent Work and the management and operation of the Project, Tenant (including its successors, permitted assigns and commercial subtenants) shall, and shall:

(i) make good faith efforts to include Minority group members and women in such work in at least the proportion that Minorities and women are available for such work in the New York City workforce;

(ii) in the event of lay-offs, make good faith efforts to maintain a similar proportion of Minority and women employees in Tenant's workforce as existed immediately prior to commencement of such lay-offs; and

(iii) meet with BPCA on a periodic basis as required by BPCA, to review Tenant's and Operator's compliance with this Section 4(b) and to determine specific opportunities where Minority and women workforce participation in Subsequent Work and management and operation of the Project might be encouraged.

5. Confidentiality. BPCA acknowledges that the information to be furnished by Tenant hereunder concerning Tenant's Contracts and bidding procedures constitutes information which, if disclosed, could impair present or imminent Contract awards, is

maintained for the regulation of Tenant's commercial enterprise and could, if disclosed, cause substantial injury to the competitive position of that enterprise. Accordingly, BPCA will, in accordance with and subject to applicable law, treat such information as confidential and use its best efforts to prevent the unauthorized disclosure thereof, except to the extent that (a) BPCA and Tenant shall agree is necessary in connection with the recruitment of qualified MBEs and WBEs to perform work on the Project, (b) BPCA may determine to use such information, without identifying such individual Contracts, as part of BPCA's overall assessment of the effectiveness of this Program in overcoming the effects of discrimination in the construction industry or (c) is otherwise necessary in connection with the enforcement of this Program in accordance with the provisions hereof.

6. Performance under Lease. No requirement of this Program, nor the assumption or performance by Tenant of any obligation hereunder, shall excuse Tenant from the performance of any of its obligations under the Lease, nor constitute a defense to any claim by BPCA under the Lease, whether for default, rental, damages or otherwise.

7. Persons Bound. Except as may be required elsewhere in this Program, this Program and the Schedules hereto, including any amendments thereto, shall be binding upon and inure to the benefit of Tenant and its respective legal representatives, successors and permitted assigns, including without limitation, any cooperative corporation, condominium association or similar entity for the Buildings. Tenant shall require its successors or assigns to confirm and agree in writing to all terms and conditions of this Program.

8. Additional Requirements. In the event that legislation is enacted or an executive order is issued which authorizes or directs BPCA to carry out additional affirmative action requirements or programs with respect to Minority or women workers or business enterprises owned and operated by Minorities or women, BPCA reserves the right to take

such measures as may be necessary or appropriate to implement such requirements or programs.

9. Separability and Invalidity: If any provision of this Program shall for any reason be held unenforceable or invalid, neither the enforceability nor the validity of any other provision of this Program shall be affected thereby. In the event that the Program is, in whole or in part, held to be unenforceable or invalid, then Tenant agrees to undertake a program of affirmative action, as directed by BPCA, which program shall not impose obligations on Tenant which are more onerous than those contained herein.

10. Approvals: All approvals and consents to be given by BPCA pursuant to this Program shall be in writing, and Tenant shall not be entitled to rely on any approval or consent which is not in writing.

11. No Third Party Beneficiary: Nothing in this Exhibit G shall create or be deemed to create any third party beneficiary rights in any person or entity not a party to the lease to which this Exhibit G is attached.

12. Governing Law: This Program shall be construed and enforced in accordance with the laws of the State of New York.

APPENDIX

AFFIRMATIVE ACTION PROVISIONS FOR CONTRACTS

ARTICLE _____

___.1 Definitions

The following terms shall have the meanings set forth below for the purposes of this Article _____:

(a) "Affirmative Action Program" A set of specific and result-oriented procedures to which a Contractor commits itself to apply every good faith effort to afford minority group members and women equal employment opportunities without discrimination on the basis of race, creed, color, national origin, sex, age, disability or marital status, and to achieve prompt and full utilization of minority group members and women at all levels and in all segments of a contractor's work force on State contracts. For purposes of this part, Affirmative Action Programs cover the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. Contractor shall remedy any deficiencies in its Affirmative Action Program and resubmit said program, or provide an adequate explanation with regard to the noted program deficiencies, within 10 business days of receipt of notice of deficiency from Owner.

(b) "Business Enterprise." Any entity, including a sole proprietorship, partnership or corporation which is authorized to and engages in lawful business transactions in accordance with New York law.

(c) "Certified business." A Business Enterprise which has been approved for minority-owned business enterprise or woman-owned business enterprise status as approved by the Division, subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women.

(d) "Division." The Division of Minority and Women's Business Development of the New York State Department of Economic Development.

(e) "Director." The Director or the Executive Director of the Division.

(f) "Directory." The directory of certified businesses, prepared by the Director, for use by contracting agencies and contractors in complying with the provisions of Executive Law, Article 15-A.

(g) "Goal." The term referring to the aim of ensuring that Minority Group Members and women and Certified Businesses be given the opportunity for meaningful participation in employment on and in the performance of State contracts, respectively.

(h) "Minority Group Member." A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

- (1) Black persons having origins in any of the Black African racial groups;
- (2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
- (3) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (4) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or the Pacific Islands.

(i) "Minority-owned Business Enterprise." ("MBE") A business enterprise, including a sole proprietorship, partnership or corporation that is:

- (1) at least 51 percent owned by one or more Minority Group Members;
- (2) an enterprise in which such minority ownership is real, substantial and continuing;
- (3) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
- (4) an enterprise authorized to do business in this State and is independently owned and operated.

(j) "Subcontract" means an agreement providing for a total expenditure in excess of \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a contractor and any individual or business enterprise, including a sole proprietorship, partnership, corporation, or not-for-profit corporation, in which a portion of a contractor's obligation is undertaken or assumed, but shall not include any construction, demolition, replacement, major repair, renovation, planning or design of real property or improvements thereon for the beneficial use of the contractor.

(k) "Utilization plan." A plan which must be submitted by a contractor to a

contracting agency listing Certified Minority- and Women-owned Business Enterprises which the contractor intends to use in the performance of the contract, or any components of the contract scope of work which the contractor intends Minority- and Women-owned Business Enterprises to perform.

(l) "Woman-owned business enterprise" ("WBE"). A business enterprise, including a sole proprietorship, partnership or corporation that is:

- (1) at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women;
- (2) an enterprise in which the ownership interest of such women is real, substantial and continuing;
- (3) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
- (4) an enterprise authorized to do business in this State and which is independently owned and operated.

2 Enforcement

The parties agree to be bound by the provisions of Article 15-A, Section 316 of the Executive Law of the State of New York and by the regulations adopted pursuant thereto (collectively, the "Executive Law").

3 Workforce Participation

(a) Contractor is required to make good faith efforts to attain the participation of _____% Minority Group Members and _____% women in the workforce for each trade or service utilized in the work under this contract.

(b) The participation for Minority and female employment must be substantially uniform throughout such work.

(c) Contractor shall not participate in the transfer of Minority or female employees from employer to employer or from project to project for the sole purpose of satisfying the participation goals above set forth.

(d) In achieving such participation, Contractor is required to make good faith efforts to find and employ qualified Minority and women supervisory personnel and journeymen.

(f) Contractor shall meet with Owner, and such other persons as Owner may invite, on a periodic basis as required by Owner to discuss issues relating to Minority and women workforce participation. At such meetings, Contractor shall report on the names of its Subcontractors then engaged in construction on the work under this contract or which within 60 days are scheduled to be engaged in construction of such work, on the nature of the work and anticipated construction schedule of Contractor and Subcontractors, on the anticipated hiring needs of Contractor and Subcontractors, on the names of the responsible foremen directly employed by Contractor, and such information requested by Owner that will then promote the employment of minorities and women. Contractor shall use its best efforts to obtain the above information and shall, upon Owner's request, cause its Subcontractors to attend said meetings and provide the above information.

**Opportunities for Participation by Minority Business Enterprises
("MBEs") and Women's Business Enterprises ("WBEs")**

Contractor shall provide for meaningful participation by MBEs and WBEs in the work under this contract. Contractor shall perform at least the following in providing for such meaningful participation:

(a) dividing such work to be subcontracted into smaller portions, where economically and technically feasible;

(b) actively and affirmatively make a good faith effort to solicit bids for subcontracts from qualified MBEs and WBEs identified in the directory of certified businesses prepared by the Division, including circulation of solicitations to Minority contractor associations. Contractor shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in such work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venture or subcontractor, the reasons for such decision;

(c) making plans and specifications for prospective work available to MBEs and WBEs in sufficient time for review;

(d) utilizing the services and cooperating with those organizations providing technical assistance to Owner in connection with MBE and WBEs participation in such work;

(e) encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors where appropriate;

(f) ensuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis; and

(g) not requiring bonds from and/or providing bonds and insurance for MBEs and

WBEs where appropriate, and/or assisting in obtaining bonds and insurance for MBEs and WBEs where feasible.

5. Minority Business Enterprise (MBE) Participation and
Women's Business Enterprise (WBE) Participation

(a) Contractor is required to make good faith efforts to attain the participation of ___% MBEs and ___% WBEs in the total dollar value of the work under this contract.

(b) The goals established in this contract as a percentage are subject to the requirements of Article 15-A of the Executive Law.

(c) The total dollar value of the work performed by MBEs and WBEs will be determined as follows:

- (1) where an MBE and WBE is not Contractor -- the dollar value of the Work subcontracted to MBEs and WBEs, provided, however, that where materials are purchased from an MBE and WBE which acts merely as a conduit for goods manufactured or produced by a non-MBE and non-WBE, only that portion of the price paid for such materials which will accrue as profit to the MBE or WBE and/or the fee received by the MBE and WBE shall be included for the purpose of determining the dollar value of Work performed by MBEs and WBEs,
- (2) where Contractor is a joint venture including one or more MBEs and WBEs as joint venturers -- the contract price multiplied by the percentage of the joint venture's profits (or losses) which are to accrue to the MBE and WBE joint venturer(s) under the joint venture agreement; and
- (3) where an MBE and WBE is Contractor or where contractor is a joint venture consisting entirely of MBEs and WBEs -- the contract price.

(d) Compliance Reports

- (1) Contractor compliance reports shall be submitted by contractors with respect to goals that have been established.
- (2) Contractor compliance reports shall be filed at intervals required by information, instructions or requirements pursuant to which bids and proposals have been solicited, or the terms and conditions of this contract awarded pursuant to negotiation.
- (3) A Contractor compliance report shall include, but not be limited to, the

following information:

- (i) the name, address and telephone number of each Certified MBE and WBE Contractor is using or intends to use to comply with the utilization plan;
 - (ii) a brief description of the contract scope of work to be performed for Contractor by each Certified MBE and WBE and the schedule dates for performance;
 - (iii) a statement of whether Contractor has a written agreement with each Certified MBE and WBE and if requested, copies of such agreements, the contractor is using or intends to use;
 - (iv) the actual total cost of the contract scope of work to be performed by each Certified MBE and WBE for the contract; and
 - (v) the actual amounts of any payments made by the Contractor to each Certified Minority and woman-owned business enterprise as of the date the compliance report was submitted.
 - (vi) Contractor's work force on this contract broken down by ethnic background, gender, and Federal Occupational Categories;
 - (vii) each Subcontractor's work force on this contract broken down by ethnic background, gender, and Federal Occupational Categories;
 - (viii) actions Contractor and Subcontractors have taken to meet the components of their respective Affirmative Action Programs;
 - (ix) how Contractor and Subcontractors intend to meet their affirmative action goals and timetables during the remainder of their performance on this contract.
- (4) Failure by Contractor to submit a required Compliance Report, including information on its Subcontractors' compliance, may be deemed a breach of this contract.